



A Dialogue on 'Death Penalty Laws in Pakistan'
Report of a dialogue on 'Death Penalty laws in Pakistan'

Participants:

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2. Mr. Javed Ali Shah Parliamentary Secretary for Industries & Production
3. Mr. Farid Paracha MNA
4. Mr. Gayan Singh MNA
5. Dr. Faqir Hussain Secretary Law and Justice Commission
6. Mr. Liaquat Banori Chairman SHARP
7. Mr. Shah Khawar General Secretary Rawalpindi High Court Bar Association
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11. Mr. Murad Ullah Zaib SHARP

Summary:

A dialogue on 'the administration of Death Penalty laws in Pakistan' was held by PCHR, on 30th Sep, so as to put this aspect of our justice system to our reform agenda.

There has been pressure from international community to repeal certain laws, having death penalty available and, were promulgated in a certain context to serve the law of necessity. These sections have lost their contextual importance and, hence, their further existence is lethal to the protection of Human Rights in Pakistan. These sections need to be repealed so that the dispensation of justice may become more fair and transparent. The court should keep in consideration the nature and context of crime so as to make trial system objective. A point was made that death penalty laws were necessary in that they deter further crimes. There should be a balance between the gravity of crime and punishment given. The implementation process of death penalties needs to be reviewed as it is incoherent and time consuming. Reforms should be introduced at all the levels of implementation process including police station, session court, high court and Supreme Court. The investigation process is crucial in determining the course of case; therefore it needs to be smooth and

transparent. There is call for promulgating laws pertaining to shocking crimes such as burning of woman and honour killing increasing the number and duration of crime has not hampered the pace of occurrences of crime. It was stressed that death penalty laws in any country were only the manifestation of rulers' maximization of their intent to consolidate their rule. It had nothing to do with the prevention of crime. Blasphemy law is being misused by some elements against minorities in Pakistan. Mainly, it is the responsibility of law and justice commission to give its recommendations on the death penalty laws. A vow was made by participants to initiate ground work on the controversial sections, which have death penalty available, so that they can be discussed in parliament.

Context:

The death penalty laws hold a controversial stance as far as the discourses regarding the human rights are concerned. Some of developed and democratic states are on the verge of repealing death penalty laws from their constitution. Whereas, there are certain other counterparts of these countries which are as democratic as the former ones, have death penalty laws enforced. Even some of those European countries, which don't have these very laws enforced, are keeping these laws in the constitution and also could recourse to them in the time of war or other pertinent state of emergency. America is a country where death penalty is enforced quite strictly and having no intent to abolish it in foreseeable future.

The complete annulment of death penalty laws in Pakistan is synonymous to day dreaming. Even the revocation of certain discriminatory and controversial laws is met with dissent from the proponents of death penalty laws. There has been pressure from international Human Rights bodies, civil society organizations and International community to repeal certain discriminatory laws that are deteriorating the state of Human Rights in Pakistan. To critically review the existence, implementation and practice of death penalty laws in Pakistan, PCHR held a dialogue to address the emerging salient themes and to develop a mutual consensus over the matter. The dialogue was centered on various crucial aspects of these laws.

Death Penalty Laws in Pakistan:

There has been pressure from International community on Pakistan to repeal certain laws and related sections that are contradictory to international rights. We need to have a probe in this matter. Here our main concern is with Death Penalty laws, in our country. Death Penalty is given to prevent disorder and to punish the criminal. We have to see that what role this death penalty law has played in our country, since it is an Islamic republic and requires measures to stifle further crimes to happen. Therefore, it should be worked out through mutual discourse that what should be amended and what should not. PCHR is comprised of Parliamentarians, who belong

to all the major political parties of Pakistan and have a voice in Parliament, so the suggestions given to PCHR can bring about productive outcomes to a large extent.

A point was made that it was hard to see any material or literature that could attack the existence of Death Penalty laws profoundly. There are certain countries where this death sentence is given, but even in those countries these laws exist in books and could be implemented during emergencies such as war and genocide. There are certain conventions such as European conventions that talk of abolishing these laws, yet, even they have derogation to restore these laws in war days. Americans say that they can not abolish these laws because with out these laws they can't run their criminal justice system. There is no basic difference in western and Islamic law, for the objective of both is to provide greater services and sound law and order situation to the people of society. There are four purposes laws are made to serve for. These purposes are separate from each other. These are 1. Retribution. What man sows should be eaten by him 2. Deterrence. Discouraging other individuals to commit the crime. 3. Prevention. Preventing the offender from committing more crimes 4. Reformation. He who commits crime, is not a rational human being and requires reformation and education. There are certain sections in our country's laws dealing with crimes other than murder, which have death penalty available. Mentioning the sections 109, 120 B, 121, 132, 194, 295, 302 C, 354364 A, 365 A, 388, 402 A, 402, it was stated that some of these crimes were not heinous and were minor in nature and most of these sections were the outcome of ordinances promulgated from time to time. Death Penalty is allowed in Quran, therefore it is not un-Islamic. However, it is the responsibility of the court to hold trial on fair and objective basis, while keeping in mind the nature of crime, the context of crime and most importantly, the nature of crime, for all these factors are very critical in determining the punishment. And regarding the nature of presence of these factors minimum punishment could be awarded.

It was argued that Death Penalty laws were necessary because they deterred further crimes and were threat for criminals, as the criminal would think of his fate before committing crime. According to a survey 600 people had been in death cells awaiting their turns. So, there was need to improve the judicial system of our country. While making legislation we had to take care because it was a social issue and needed to be presented in Parliament. Moreover, there should be a balance between the gravity of crime and the punishment given.

It was made that we must see the process from bottom to top. FIR is written by a police official of ASI or Sub-Inspector rank, who has a limited and narrower view of incidence. So, the authenticity of FIR is imperiled and it bears fake implications. Therefore murder cases should be investigated by a group of Police officers and not by an individual. When the case reaches Session court, it becomes a part of larger heap of cases already waiting to be heard by the judges who are limited in number. A civil judge has to hear more than 40 cases a day and it is far difficult to tackle so many

civil and criminal cases a day. So, state should shift its priorities toward citizen related matters by increasing the number of trial jury. When a case is disposed off from Session court, it reaches High court. Session Court sends reference to high court, which is heard by Divisional Bench. Then the paper book of case is prepared that takes one and a half or two years. From High Court case can be taken to Supreme Court. During this whole period the one who gets death penalty, remains in death cell waiting for his fate. It is mainly due to the scarcity of Jury and maladjustments. So state should enact new refined legislation dealing with the administration of process.

Our system is so time consuming that a criminal remains fearless and is least bothered about his crime. Our investigation process should be smooth and quick, as it is in the hand of investigation officer to mould the description of events. The law enforcement agency should reach at spot and investigation should be supervised by the Judicial Magistrate. The investigation should be held by the team of three Police officers so as to make it fair. Moreover, trial must be completed within seven days. There is need for promulgating law dealing with shocking crimes such as the burning of woman and honor killing. Parliament should take notice of these crimes and the laws should be introduced by Parliament and not through ordinances. The crimes with death penalty should be studied in their specific context. Then, some questions were raised pertaining to death penalty laws. In Pakistan the solution of curbing the crime was to increase the number and duration of punishment. If increase in the duration and intensity of punishment doesn't help restrain crime, then what use is it of? Is everybody involved in this process corrupt and dysfunctional?

Bhutto decided to convert death penalty sentence into 25 years imprisonment but it could not take place due to the sudden political change. The plight of prisoners in death cell is far from satisfactory and in a narrow death cell the average of seven prisoners is kept and only twice a day they are allowed to come out of cell for the interval of half an hour. Furthermore, they are shifted to different cells on daily basis. Another issue was raised that there was no compensation in our legislation for the one who got extra punishment owing to delay in case hearing. A disagreement rose in accepting death penalty because murder for murder was principally wrong. Even, in Islam, Allah says that he can forgive every sin but not the ones who deal with the fellows of man himself. Death penalty in any society is enacted by the rulers just to consolidate their rule and to terrorize the people. Our society has become a heap of filth. Blasphemy law is a discriminatory one, for it was being misused by some individuals against minorities just to address their personal rifts and grievances. Such a way should be developed that could curb the evil in a non-violent manner.

There should be discussions on death penalty laws having philosophical connotations, for the miscarriage of justice is not allowed. These issues need to be discussed and are open to scrutiny. The International conventions require that there should be preventive measures and not punitive measures alone. In our country the conviction rate is the lowest i.e 10-15 percent. It is the duty of Law and Justice

Department to probe into this matter by making positive legislation on it. The only ordinance that prevents death penalty is Juvenile Justice System Ordinance (JJSO). So, Law and Justice Commission should give its recommendation over it.

It was said that this discussion was a fruit for thought and now we should hold a workshop on it so that we may bring this debate to public forums. Participants were mutually agreed upon the option that the best way would be to take above discussed sections to Parliament phase by phase. It is proposed that we need to have a ground work for it by making a subcommittee on the issue having technical input from experts. Death penalty, in cases other than pertaining to murder, should be turned into life imprisonment as the maximum punishment. We will do it section by section and period by period, Mr. Fatyana concluded.

Recommendations:

- Discourses about death penalty laws should be made part of public debate.
- Dialogue on death penalty must encompass all the philosophical connotations.
- Court should hold trial on fair and objective basis, while keeping in mind the nature of crime and the context of crime, for all these factors are very critical in determining the punishment.
- State should enact new refined legislation dealing with the process of administration.
- State should shift its priorities toward citizen related matters by increasing the number of trial jury.
- The investigation of a murder case should be supervised by a judicial magistrate.
- The investigation should be held by the team of three Police officers so as to make it fair and transparent.
- The discriminatory Death Penalty laws must be taken to parliament by the PCHR parliamentarians working on Human Rights issues.

Follow-up:

In the end it was decided that ground work for this will be initiated by Mr. Khawar Shah and he would supervise the preliminary work of the sub-committee that is formed to take up the matter to parliament.

