

# PART 1: MORATORIUM LIFTED

## MORATORIUM LIFTED

**NAP POINT 1:** Implementation of death sentence of those convicted in cases of terrorism.

### 1.1 Introduction

The very first point in the NAP, and our first theme, is the lifting of the moratorium that had been in effect since 2008. Pakistan People's Party came into power in the 2008 elections, installing former Prime Minister Benazir Bhutto's husband Asif Ali Zardari as the President. Bhutto was a lifelong opponent of the death penalty, and in her honor, the party instated an indefinite moratorium on the death penalty in Pakistan.

Most believe the moratorium was lifted after the Army Public School (APS) attack on December 16, 2014. In actuality, the moratorium had come to an end two years prior, when a former soldier, Muhammad Hussain was hanged at Central Jail Mianwali, on November 14, 2012 after being convicted of murder by a military court<sup>1</sup>. The enactment of NAP drastically accelerated this process, but the moratorium had already been violated. Even after the APS attack, the first executions occurred on December 19, 2014, six days before the NAP was formally announced and adopted.

### 1.2 Methods of Execution

Pakistan almost exclusively uses hanging as its chosen method of execution. Stoning was also legislatively introduced in 1990, however, it has never been used as a method of execution and was legislatively demoted in 2006<sup>2</sup>. Various other methods are used around the world, including lethal injection, shooting, electrocution, stoning and several others.

### 1.3 Worldwide Comparison

Since NAP, and as of January 24, 2016 (the first 13 months), a total of 345 individuals have been hanged for various crimes in Pakistan<sup>3</sup>. Of these, 327 were hanged

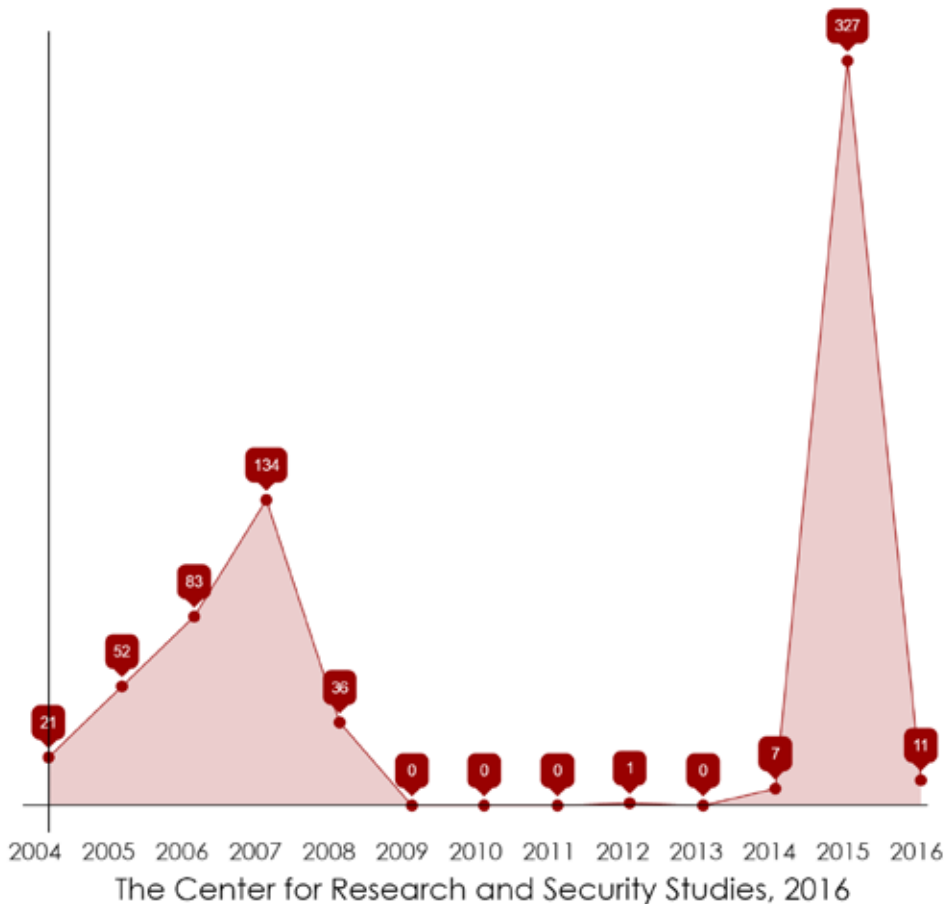
<sup>1</sup> Pakistani soldier Muhammed Hussain is executed for murder. (2012). Retrieved February 16, 2016, from <http://www.bbc.co.uk/news/world-asia-20337183>.

<sup>2</sup> Hubbard, A. (2007). Slow march to the gallows: Death penalty in Pakistan (Publication No. 464/2). Retrieved February 14, 2016, from <https://www.fidh.org/IMG/pdf/Pakistan464angconjointpdm.pdf>.

<sup>3</sup> See Annex I: Executions.

in the year 2015 alone. Previously, 2007 was the year with the most number of executions in the last decade in Pakistan, with 134 people executed.

**Graph 1.1: Executions since 2004<sup>4</sup>**



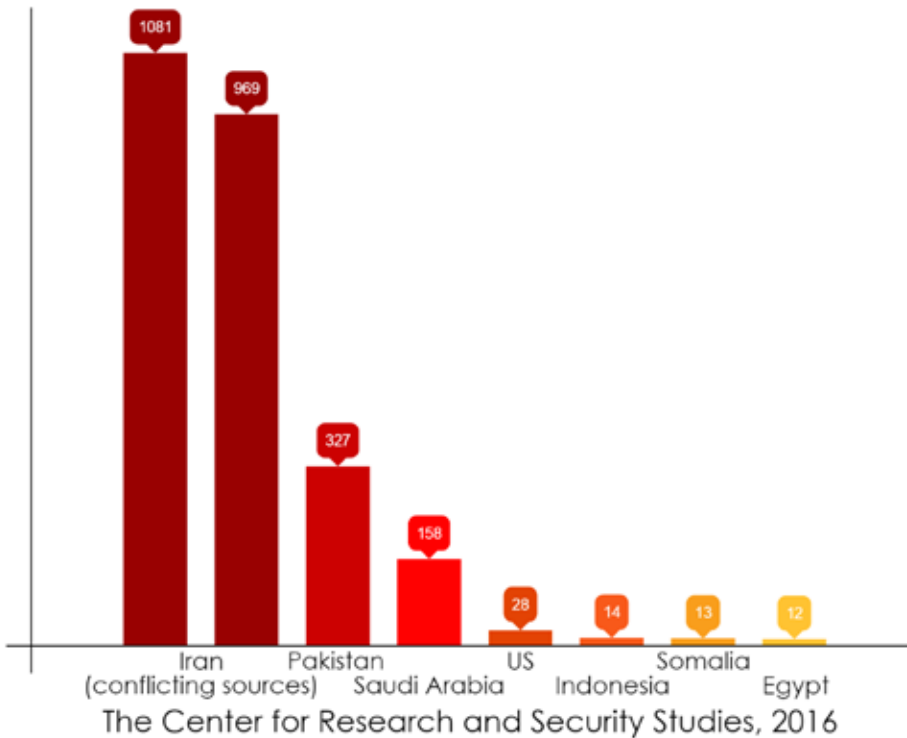
The 327 executions in 2015 place Pakistan third in the world in terms of the number of individuals executed by the state. China is widely recognized as the country with the most number of executions, but because this data is considered a state-secret, there are no official figures available. There were an estimated 2,400 executions each in China in 2013 and 2014<sup>5</sup>. This is down significantly from 2002, when an estimated 12,000 people were executed in China. Iran ranks second,

<sup>4</sup> Who has been executed? (n.d.). Retrieved February 16, 2016, from <http://hrcp-web.org/hrcpweb/who-has-been-executed/>.

<sup>5</sup> China Executed 2,400 People in 2013, Dui Hua. Retrived May 2, 2016, from [http://duihua.org/wp/?page\\_id=9270#.VEYCPVN1sYg.twitter](http://duihua.org/wp/?page_id=9270#.VEYCPVN1sYg.twitter).

with an estimated 969<sup>6</sup> – 1,084<sup>7</sup> people executed in 2015, although the government officially maintains that 364 were executed. Even when government count is used, Pakistan ranks third in the world in terms of executions assuming China's unknown executions rank highest. This is followed by Saudi Arabia, which reportedly executed 158 people in 2015<sup>8</sup>.

**Graph 1.2: Executions in 2015 by country<sup>9</sup>**



<sup>6</sup> IHRDC Chart of Executions by the Islamic Republic of Iran - 2015. (n.d.). Retrieved February 16, 2016, from <http://www.iranhrdc.org/english/publications/human-rights-data/chart-of-executions/1000000564-ihrc-chart-of-executions-by-the-islamic-republic-of-iran-2015.html>.

<sup>7</sup> Reported Executions 2015. (2016). Retrieved February 17, 2016, from <https://iranrights.org/>.

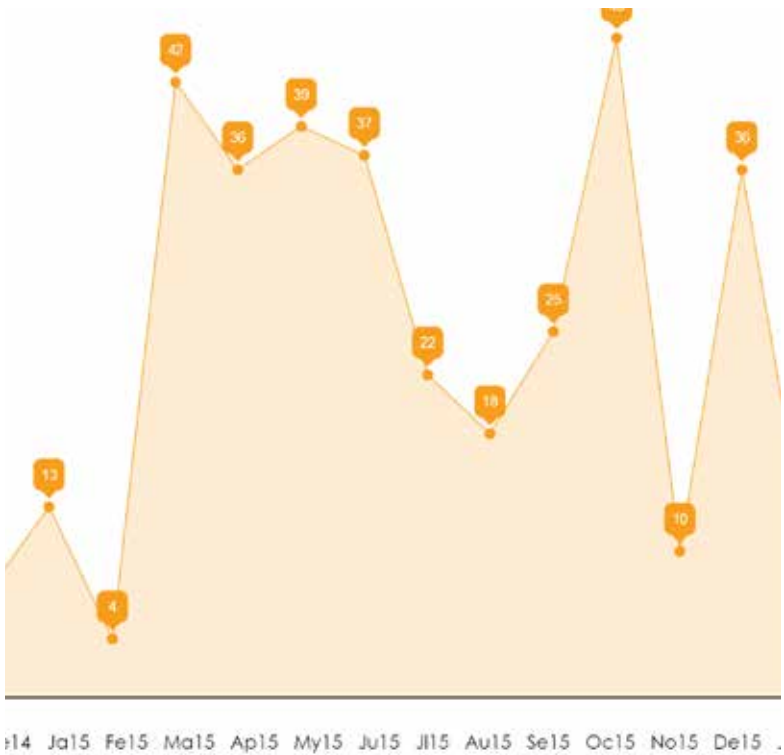
<sup>8</sup> Cornell Law University (2016). Death Penalty Database - Saudi Arabia. Retrieved February 17, 2016, from <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Saudi Arabia>.

<sup>9</sup> Death Penalty Worldwide - Executions in 2015. (n.d.). Retrieved February 16, 2016, from <http://www.deathpenaltyworldwide.org/country-search-post.cfm>

#	Country	No. of Executions <sup>9</sup>
1	China	Unknown
2	Iran	969/1081
3	Pakistan	327
4	Saudi Arabia	158
5	USA	28
6	Indonesia	14
7	Somalia	13
8	Egypt	12

1.4 Executions by Month Since December, 2014

Graph 1.3: Executions by month since December, 2014.



Month	Executions
December, 2014	7
January, 2015	13
February, 2015	4
March, 2015	42
April, 2015	36
May, 2015	39
June, 2015	37
July, 2015	22
August, 2015	18
September, 2015	25
October, 2015	45
November, 2015	10
December, 2015	36
January, 2016	11

October 2015 ranks the highest with 45 total executions in a single month, and February 2015 saw the fewest executions at 4. Aside from a slow start, Pakistan has been fairly consistently executing just under one convict a day.

## 1.5 Controversies and Criticism

The decision to lift the moratorium has come under significant criticism from both foreign governments and human rights activists and organizations.

### 1.5.1 Number of Inmates on Death Row

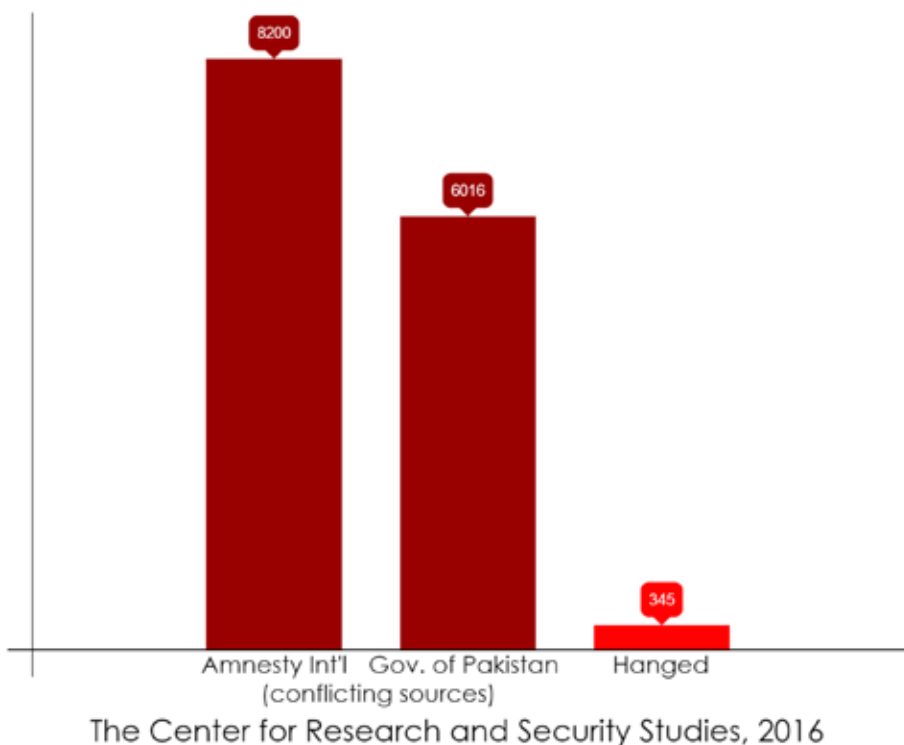
Amnesty international reports that over 8,200 are currently on death row in Pakistan.<sup>10</sup> This figure is contradicted by Minister of State for Interior Baleeghur Rahman, who told the Senate of Pakistan in October 2015 that 6,016 prisoners were on death row in the country's jails.<sup>11</sup> Either way, given the current rate, Pakistan

<sup>10</sup> Niaz, T. (2015, October 07). Over 6000 condemned prisoners in Pakistan. Retrieved February 28, 2016, from <http://nation.com.pk/national/07-Oct-2015/over-6000-condemned-prisoners-in-pakistan>.

<sup>11</sup> Reprieve - Pakistan reaches 150 hangings, amid plans for juvenile execution. (2015, June 04). Retrieved February 28, 2016, from <http://www.reprieve.org.uk/press/pakistan-reaches-150-hangings-amid-plans-for-juvenile-execution>.

will take two decades to execute all death row convicts, not accounting for any additional convictions in said time period.

**Graph 1.4: Number of reported inmates on death row in Pakistan**



### 1.5.2 Human Rights Watch

Human Rights Watch (HRW) termed Pakistan's decision to lift a ban on capital punishment as a "flawed and reckless response" to the horrific Peshawar School Attack and urged Pakistan to reinstate the moratorium on death penalty as a step towards its abolition. A day later, on December 19, 2014, the first hangings took place.

Deputy Asia Director Phelim Kine said instead of this emotional response in a state of national grief, the Government of Pakistan must address the security threats that create these situations for criminals and militants to thrive. He termed the death penalty as an inherently cruel and irrevocable punishment, "The Pakistan government can take a powerful symbolic stand against the mass murder in Peshawar by reaffirming its opposition to killing and immediately re-

instating the death penalty moratorium”.<sup>12</sup>

More criticism followed in March, 2015. Kine said, “The Pakistani government’s ill-conceived decision to completely abandon its death penalty moratorium puts thousands of lives at risk. Government approval of a potential nationwide execution spree is a knee-jerk reaction to a terrible crime rather than a considered response to legitimate security concerns.”

Pakistani law dictates capital punishment for 27 offenses, including murder, rape, treason, and blasphemy.<sup>13, 14</sup> A joint report issued earlier in December by the nongovernmental human rights organization Justice Project Pakistan (JPP) and Reprieve concluded that an overuse of anti-terrorism laws by Pakistan’s security forces and judiciary has been observed which is reflected by a high number of people on death row for terrorism related convictions. The report states that “instead of being reserved for the most serious cases of recognizable acts of terror, the anti-terror legislation is in fact being used to try ordinary criminal cases, either in a deliberate attempt to evade the procedural safeguards guaranteed by ordinary courts or due to the vague and overly broad definitions of ‘terrorism’ in the legislation.”<sup>15</sup>

### 1.5.3 International Community and the EU

The EU and most western countries have also expressed grave concerns over the death penalty and its impact in Pakistan. EU spokesperson Catherine Ray said the EU has constantly called for the universal abolition of capital punishment.<sup>16</sup>

EU envoy to Pakistan Lars-Gunnar Wigemark and other delegates reacted to the uplifting of moratorium in a joint statement, “We believe that the death penalty is not an effective tool in fight against terrorism.” EU demanded the immediate restoration of moratorium on death penalty. Head of European Parliament Sub-Committee on Human Rights Ana Gomes voiced the EU’s stance against the death penalty. “The EU is opposed to the capital punishment in all cases without excep-

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<sup>12</sup> Web Desk. (2014, December 18). Lifting moratorium ‘a flawed response to Peshawar school attack’: HRW. Retrieved May 5, 2016, from <http://tribune.com.pk/story/808906/hrw-term-lift-of-moratorium-a-flawed-response-to-peshawar-school-attack/>

<sup>13</sup> Death penalty offences. (2015, November 26). Retrieved February 16, 2016, from <http://hrcp-web.org/hrcpweb/death-penalty-offences/>.

<sup>14</sup> See Annex III: Death Penalty Offenses.

<sup>15</sup> Pakistan: Take Death Penalty Off the Table Resuming Executions for All Capital Crimes a Huge Step Backward. (2015, March 12). Retrieved February 28, 2016, from <https://www.hrw.org/news/2015/03/12/pakistan-take-death-penalty-table>.

<sup>16</sup> Haider, M. (2015, January 11). EU demands reinstatement of death penalty moratorium in Pakistan. Retrieved February 27, 2016, from <http://www.dawn.com/news/1187562>.

tion. The EU delegation hopes that the moratorium on the death penalty will be extended, which will be a key step in the right direction,” Gomes said, adding that it will be viewed as major setback if Pakistan lifted the moratorium.<sup>17 18</sup>

### 1.5.4 Human Rights Commission of Pakistan

Pakistan has to face opposition on the international as well as national level on the uplifting of the moratorium. Human Rights Commission of Pakistan (HRCP) had concerns regarding the high number of executions and the hangings of inmates allegedly convicted as juveniles. In a statement, the HRCP said: “The resumption of executions as well as the pace with which they are being carried out is matter of concern. The state of Pakistan executed 134 persons in the 12 months of 2007. In a little over five months in 2015, that number has already been exceeded. What is even more troubling is that this figure has been reached when nearly seven months of the year are still left.”<sup>19</sup>

HRCP restated that wrongful and unjust convictions could be made because of well documented deficiencies and in the law and flawed criminal justice system. In fact, the prevailing circumstances have made it considerably more difficult for the accused to assert their due process rights, particularly the presumption of innocence until guilt is proved. Even if the government thinks that a complete abolition to executions is not possible immediately for any reason, HRCP has urged the government to stop executing all but those found guilty of committing the most serious crime.

### 1.5.5 Amnesty International

Amnesty International’s response is as expected. “Pakistan’s ongoing zeal for executions is an affront to human rights and the global trend against the death penalty,” David Griffiths, the group’s South Asia Research Director, said in the statement.

Since a wheel-chaired man was set for execution, Pakistan government had to face severe reactions from rights-based organizations and the international com-

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<sup>17</sup> Haider, M. (2014, December 24). EU opposes removal of moratorium on death penalty in Pakistan. Retrieved May 2, 2016, from <http://www.dawn.com/news/1152894>.

<sup>18</sup> Gishkori, Z. (2013, August 28). Capital punishment: EU cautions against lifting moratorium. Retrieved May 2, 2016, from <http://tribune.com.pk/story/596285/capital-punishment-eu-cautions-against-lifted-moratorium/>.

<sup>19</sup> Haider, M. (2015, January 11). EU demands reinstatement of death penalty moratorium in Pakistan. Retrieved February 27, 2016, from <http://www.dawn.com/news/1187562>.



munity.<sup>20</sup> “Even if the authorities stay the execution of Abdul Basit, a man with paraplegia, Pakistan is still executing people at a rate of almost one a day,” Griffiths said.

The rights group also alleged that many of the executions do not meet international fair trial standards.<sup>21</sup>

### 1.6 Does the Death Penalty Serve as a Deterrent?

The Pakistani government believes that the death penalty serves as a significant deterrent to the criminal mindset. “You’ve seen the number of terrorist attacks going down drastically,” the Prime Minister’s Special Assistant for Law, Ashtar Ausaf Ali, told Reuters. “One of the reasons is fear. Fear of being executed.”<sup>22</sup>

Data suggests that terrorism and overall casualties have seen a significant decline in 2015. However, there is no data to suggest a correlation between executions and reduction in crime.

Kine’s response was as follows: “Pakistan’s government should demonstrate wise leadership by recognizing the well-documented failure of the death penalty as a crime deterrent and joining the growing number of countries that have abolished capital punishment. The government should treat the death penalty for what it is: a cruel and irrevocable punishment rather than a policy solution to complex crime and security problems.”

Griffiths states that there is no evidence the “relentless” executions have done anything to counter extremism in the country.

Please also see [Section 1.8](#) below for an argument for whether the death penalty serves as an actual deterrent to crime, militancy and insurgency.

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<sup>20</sup> Hall, J. (2015, August 22). Pakistan plans to execute a severely disabled man by hanging him to death while he remains seated in his wheelchair. Retrieved February 17, 2016, from <http://www.dailymail.co.uk/news/article-3204936/Pakistan-plans-execute-severely-disabled-man-hanging-death-remains-seated-wheelchair.html>.

<sup>21</sup> AFP. (2015, November 25). Execution of disabled man delayed for fourth time. Retrieved February 11, 2016, from <http://nation.com.pk/islamabad/25-Nov-2015/execution-of-disabled-man-delayed-for-fourth-time>.

<sup>22</sup> Houreld, K. (2015, July 27). Insight - Militants in minority in Pakistan execution drive, deterrent effect debated. Retrieved January 11, 2016, from <http://uk.reuters.com/article/uk-pakistan-executions-insight-idUKKCN0Q00WI20150727>.

### 1.7 Conclusion

By the government's standards, executing inmates on death row has been a necessary and successful step towards the implementation of the NAP. However, the complexity of the situation in Pakistan has serious implications for this point in the NAP, and the criticism from rights-based organizations as well as foreign governments, in addition to the lack of evidence that the death penalty serves as a deterrent, will continue to put pressure on the government to reconsider its stance. However, there is no evidence to suggest that this process will slow down or recede in the slightest, and executions will likely continue unabated in the year to come.

### 1.8: **OPINION: Unpardonable** *by Zaair Hussain*

The attack on APS Peshawar was one of those moments upon which a nation's history turns. A hundred and thirty two of our children were murdered in cold blood, our hearts shattered, and the moratorium on the death penalty snapped like a twig.

The abolition, like the moratorium itself, was not an act of the judiciary. It was an act of the executive, a political act. A wounded nation roared for blood, and Prime Minister Nawaz Sharif chose not to stand between the maddened crowd and their pound of flesh.

Philosophically, the idea of capital punishment (in special cases and contexts) is not entirely without merit. Broadly, there are three substantial arguments to support the lifting of the moratorium:

First, the idea that vengeance (often called 'justice') has no place in the law is nonsensical. The law is made by and for human beings, and the state assumes the role of retribution so that vigilantes do not take to the streets. The law asks to be more patient, more methodical than we would otherwise be. It does not ask us to be saints, or to find in our hearts forgiveness for the unforgivable.

Second, men who murder children have severed their ties to civilized humanity and declared total war on the country - they have clearly signaled their intent to fight without regard to any humanitarian code of just war. A life dedicated to bringing unfathomable pain to others cannot have unlimited inherent value, under most moral frameworks, simply because it's genetic makeup is human.

Third, our prison system has repeatedly shown it has little capacity to neutralize terrorists. Maulana Abdul Aziz waged an armed war against the state from Lal Masjid and was again delivering sermons from the same mosque within a year. Mumtaz Qadri, allegedly, convinced at least one guard to carry out a murder from within his cell. 175 inmates were violently jail broken by the Taliban in DI Khan in 2012. While it is true that the threat of death is unlikely to deter terrorists, execution is at least a reliable form of neutralization.

That said, all Pakistanis should be wary of the wanton way in which capital punishment has come rushing in to fill the void of national loss.

Even if we consider that the state was correct in acceding to the demand of its people, their fury was aimed at terrorists. Executions were not only resumed, they were stepped up to new heights. Pakistan has executed 345 people as of January 24, 2016, the highest number on record. According to data collected by

the Human Rights Commission of Pakistan (HRCP), of the 195 people executed as of July 31, a minority were terrorists: -between 22 and 42 depending how broadly “terrorism” is defined.

What was supposedly a narrow and focused effort against terrorism seems to be a cover for broad and profound changes. This is a terrifying prospect. We need only look at recent history and the global “war on terror” to understand how far even a democratic government can overreach when its people are frightened and wounded and angry.

Pakistan’s legal system has infamously little in the way of safeguards, particularly for the poorer and more vulnerable members of its population: underage and mentally disabled prisoners have been convicted of and executed for capital crimes. Incidents of confessions extracted under torture and falsified evidence are reportedly rampant. The vast majority of defendants have no access to competent legal counsel, and due process is a theoretical ideal rather than a reasonable expectation.

Finally, the sheer pace of convictions and executions should horrify anyone, pro or anti capital punishment, who believes at all in fair trials. The idea that Pakistan’s lumbering legal system could convict and execute over 300 people the first year while maintaining any standards of due process is absurd. Another 8,000 remain on death row, almost thrice the number of the much larger United States, which is itself no stranger to capital punishment.

In a democracy, we the people are complicit in the functioning of the state, including the machinery of death. It is not a thing to be trifled with, to be flipped on in a moment of rage and sorrow. If we wish to preserve capital punishment in our nation, this is our collective right. But with it comes an intense responsibility to be aware of exactly who we are executing, and exactly why. With it, too, comes a responsibility to hold our state accountable for this most profound of punishments. To execute a man may, sometimes, be a harsh necessity. To execute a man without due process is murder, and stains all our hands with blood.

It makes for a poor tribute to the children of APS.

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