

Dead wrong

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Immediately after the December 16 Taliban attack on Army Public School (APS) in Peshawar last year, Pakistan scrapped a six-year informal moratorium on executions, and approved “execution of death penalty in terrorism-related cases”.¹ The executions had been suspended in December 2008.

Within a week, by December 24, the federal government facilitated a ‘national consensus’ on a National Action Plan (NAP) to counter terrorism. Those who listened to the prime minister deliver the 20-point action plan in a televised address would recall that the first point he mentioned was resumption of execution of convicted terrorists.² This early reference indicated that capital punishment was considered one of the preferred weapons in the counter-terrorism arsenal.

Over the last two weeks of December, seven prisoners were hanged. These were mainly convicted for the 2009

attack on the military headquarters in Rawalpindi and for the 2003 assassination attempts on military ruler General Pervez Musharraf.³

Three months later, in March, Pakistan resumed executions for all death penalty offences, doing away with the caveat of hanging convicted ‘terrorists’ only.⁴

The abolition and retention arguments

Since the resumption of executions, pro- and anti-death penalty advocates have been fervently articulating whether the death penalty is a panacea to stopping terrorist attacks in Pakistan.

Several national and international human rights activists and organisations as well as the United Nations and European Union have urged the government to stop the executions and/or revive the moratorium on death penalty.⁵

¹ “PM lifts ban on death penalty in terrorism cases,” *Express Tribune*, December 17, 2014.

² “Fight against terrorism: Defining moment,” *Express Tribune*, December 25, 2014.

³ “Convicts in GHQ, Musharraf attack cases executed,” *Dawn*, December 20, 2014; “At the gallows: 4 convicts in Musharraf attack case executed,” *Express Tribune*, December 22, 2014; “Convict in Musharraf attack case hanged,” *Dawn*, January 1, 2015; Human Rights Commission of Pakistan (HRCP), *The State of Human Rights in 2014*, p. 96.

⁴ “Govt ends death penalty freeze in all cases,” *The Nation*, March 11, 2015.

⁵ “UN chief urges Pakistan to end executions, reinstate death penalty moratorium,” UN News Centre, December 26, 2014; “UN rights chief urges Pakistan Government to reintroduce death penalty moratorium,” UN News Service, June 11, 2015; “EU opposes removal of moratorium on death penalty in Pakistan,” *Dawn*, December 24, 2014; “EU demands reinstatement of death penalty moratorium in Pakistan,” *Dawn*, June 11, 2015.

Human Rights Commission of Pakistan (HRCP) opposed capital punishment on account of “the well-documented deficiencies of the law, flaws in administration of justice and investigation methods and chronic corruption.” It stated that in these circumstances, “capital punishment allows for a high probability of miscarriage of justice, which is wholly unacceptable in a civilised society, particularly because the punishment is irreversible.”⁶

Human rights organisations argue that research around the world has shown that the death penalty does not lead to reduction in crime. They cite the high prevalence of crime in leading executing states, such as China and Iran, as evidence that capital punishment does not serve as a deterrent against crime.

On the other hand, supporters of the death penalty in Pakistan put forth their own arguments, usually citing religious mandate for capital punishment and accentuating its supposed deterrence value.

Those in favour of executions argue that this is the only way available for the government to deal with the scourge of terrorism and militancy in Pakistan. It is also argued that dangerous and hardened criminals

could neither be released nor rehabilitated and could not even be secured within the prisons, as these militants posed a constant and imminent threat of jailbreaks.⁷

‘Terrorists’ or criminals?

In order to determine whether the resumption of executions has boosted the counter-terrorism effort, as the pro-camp argues, the first step must be to grasp who is a terrorist in official reckoning and what are ‘terrorism charges’.

Pakistan’s anti-terror laws essentially bracket some offences as constituting terrorism. Thus, someone accused of crime can be counted as a ‘terrorist’, provided the charge against that person was brought under an anti-terror law.

Foremost among these laws is the Anti-Terrorism Act (ATA), which, besides identifying terrorism-related offenses, also marks non-terrorism-related offenses.⁸

Such extensive application of the ATA has drawn criticism from several rights groups. In a report on death row prisoners, Justice Project Pakistan, a human rights organisation, noted that the definition of terrorism in Pakistan’s

⁶ “HRCP calls for staying planned executions; abolishing death penalty,” *Daily Times*, September 12, 2014.

⁷ “Death penalty debate,” *Dawn*, January 12, 2015.

⁸ “Pakistan lifts death penalty moratorium,” *AlJazeera*, December 17, 2014.

anti-terror laws was “vague and overly broad, bearing little relationship to terrorism as it is commonly understood” and that these laws were “being grossly overused, often in cases that bear no relation to terrorism.”⁹

‘Progress’ so far

Here are some key findings regarding the individuals executed from December 19, 2014 until July 31, 2015, drawn from media reports and data tabulated by the Human Rights Commission of Pakistan (HRCP):

- 195 convicts had been executed during the period mentioned, making this year’s executions in Pakistan the country’s highest over the last decade. The executions in the first five months of 2015 alone exceeded the tally of 134 – the total number of executions in 2007, the highest for any one year in the last decade, reported HRCP.¹⁰
- Of the 195 individuals put to death, no more than 42 could be called ‘terrorists’ under all possible interpretations of the word.¹¹ Even among the 42, many might only be considered common criminals – as

they were accused of committing individual crimes, which had nothing to do with any religious, political, or ideological goals.

Out of the 195 executed, only 22 people had been convicted for sectarian-, militancy- or terrorism-related charges, such as assassinations, assassination attempts, sectarian murders, killing of security officials, or hijacking.

Almost all of the remaining 173 people executed had been common criminals. This means that at least eight out of every nine convicts hanged since December last had not been ‘terrorists’ but common criminals – individuals who had been accused of murder, robbery, possession of narcotics, property disputes, etc.¹² Thus, despite the fast-paced hanging, ‘terrorists’ formed a tiny minority of those executed.¹³

Almost all of the 22 ‘legally-sanctioned terrorists’ were hanged from December 2014 through February 2015, in the early days after the formulation of NAP. Most of the remaining 173 convicts had been executed in non-terrorism cases under the Pakistan Penal Code, and

⁹ Justice Project Pakistan and Reprieve, *Terror on Death Row*, pp. 3 & 5, December 2014, [www.jpp.org.pk/upload/Terror on Death Row/2014_12_15_PUB WEP Terrorism Report.pdf](http://www.jpp.org.pk/upload/Terror%20on%20Death%20Row/2014_12_15_PUB%20WEP%20Terrorism%20Report.pdf).

¹⁰ “HRCP concerned over 135 executions,” *Dawn*, June 4, 2015.

¹¹ A list of those executed can be seen at: hrcp-web.org/hrcpweb/who-has-been-executed.

¹² *Ibid*.

¹³ “Militants in minority in Pakistan execution drive, deterrent effect debated,” Reuters, July 26, 2015.

under other laws, such as the Control of Narcotic Substances Act. The number of hangings rose exponentially from March 2015 onwards, when executions resumed for all capital offences. The number of hangings declined for June and July, as the government suspended executions in the name of “respecting human dignity” during the Muslim fasting month of Ramazan, which started in mid-June and ended mid-July.¹⁴

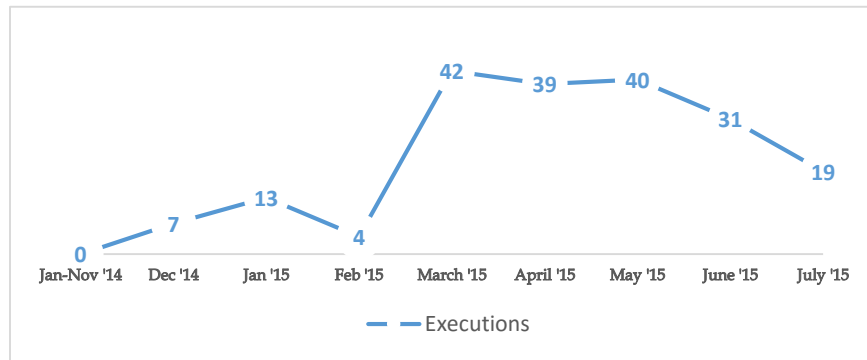
Reflections on the way forward

The death penalty can only be considered an effective terrorism-fighting tool provided it deters those engaged in militancy or terrorism.

suggesting that the security situation had improved somewhat.

But, as noted earlier, ‘terrorists’ form a small minority of those hanged. Even as the 195 executions have already put Pakistan among the world’s top executioners, the available evidence suggests that the overwhelming majority of those executed so far have not been ‘terrorists’. Whither all notions of supposed deterrence, then?

Just like some existing research lays bare the myth of capital punishment serving as a deterrent against crime, the mass executions spree that Pakistan has embarked on seems unlikely to boost significantly its anti-terrorism efforts. It has been argued, with some merit, that many



Prima facie, it might appear that the resumption of executions has coincided with some decline in the incidence and severity of terrorist attacks in the country in 2015,

of the extremist terrorists that the executions have seemingly been revived for are individuals who – on account of their indoctrination or conviction, however misplaced that might be – are committed to dying

¹⁴ “HRCP on executions: human dignity should be respected all year round,” HRCP, June 23, 2015, [hrcp-](http://hrcp-web.org/hrcpweb/hrcp-on-executions-human-dignity-should-be-respected-all-year-round)

[web.org/hrcpweb/hrcp-on-executions-human-dignity-should-be-respected-all-year-round](http://hrcp-web.org/hrcpweb/hrcp-on-executions-human-dignity-should-be-respected-all-year-round).

for their 'cause'; and that the fear of hanging might not deter them.¹⁵

At one level, it can be argued that the return to executions might not have been about elimination of terrorism at all. It might just have been the state bowing to a deeply traumatised and equally brutalised society's call for retribution. As much as anything else, resuming executions after the APS massacre could well have been a message to reassure a populace yearning for peace that the state was not out of options, and that it had the stomach to act tough and take the fight to the terrorists.

The path to the gallows was chosen, perhaps, because it was the easiest one to reassure the people; or at least, easier than confronting Taliban apologists and challenging the militant ideology that persuades people to kill and die.

Or, may be the state was just waiting for an excuse to resume the hangings. After all, this is a state that chose to suspend executions for six years, without ever bothering to explain the rationale for the moratorium to the populace. Throughout this time, the state did not even pretend to try reducing the 27 odd death penalty offences on the statute books, despite reminders and advice from rights groups. It chose not to initiate a discourse on the abolition of the death penalty.

Addressing terrorism by relying on the death penalty alone would be akin to treating only the symptom and ignoring the root cause. Defeating the sort of terrorism that afflicts Pakistan would be difficult, if not impossible, without confronting and defeating the ideology of hate and intolerance that provides impetus and foot soldiers to the militant extremist establishments.

This would involve military action, learning from past mistakes of nurturing militant surrogates, reaching out to the militant rank and file with the stick of military action and the possibility of reform and rehabilitation, and effective investigation and prosecution to bring the militants to justice for their crimes.

¹⁵ Ibid.