

RE-EVALUATING THE TREATMENT OF DEATH ROW PRISONERS IN PAKISTAN: RECENT SUPREME COURT OF PAKISTAN RULING AND ITS IMPACT

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ABSTRACT

The treatment of death row prisoners in Pakistan has long been a subject of concern, with particular attention to the conditions under which these inmates are housed while awaiting the final decisions on their appeals. This paper examines the recent ruling by the Supreme Court of Pakistan, which addresses the issue of whether prisoners under a sentence of death should be held in separate barracks or cells, rather than the traditional death cells, until their appeals are conclusively resolved. By analyzing this ruling, the paper explores its implications for the rights and welfare of death row inmates, the legal precedents it sets, and its potential impact on the broader criminal justice system in Pakistan. The study further discusses how this decision reflects a shift towards more humane treatment within the penal system and considers the challenges of implementing such reforms. Ultimately, this paper aims to contribute to the ongoing dialogue on prison reform and the protection of human rights in Pakistan.

Keywords: Death row prisoners, Condemned Prisoners, Prolonged Incarceration, Prison Reforms, Death Sentence, Supreme Court.

INTRODUCTION

The treatment of death row prisoners has been a topic of intense debate, particularly in countries where the death penalty remains a legal form of punishment. In Pakistan, concerns about the conditions under which these prisoners are held have persisted for years, often highlighting the inhumane environment of death cells. Death row prisoners in Pakistan are traditionally confined to cramped, isolated death cells, where they await the outcome of their appeals, sometimes for years, in a state of uncertainty and extreme psychological distress. This has raised significant concerns about human rights violations, as these conditions may amount to cruel and inhumane treatment, contrary to both international human rights standards and the Constitution of Pakistan.

The recent ruling by the Supreme Court of Pakistan in the case of *Ghulam Shabbir versus State* (Criminal Review Petition No. 103 of 2017 in Criminal Appeal No. 643 of 2009) has marked a pivotal shift in addressing these concerns. The court considered whether prisoners under a sentence of death should remain in the conventional death cells, or if they should be housed in less restrictive environments, such as separate barracks, until their appeals are conclusively resolved. This ruling is a significant step towards a more humane approach to penal reform, focusing on the welfare of death row inmates during the period of their legal uncertainty.

The Supreme Court's decision is not only important for its immediate impact on the

conditions faced by death row prisoners but also for the legal precedents it sets for the broader criminal justice system in Pakistan. By re-evaluating the traditional practices of housing death row inmates, the ruling encourages a broader discourse on prison reform and the protection of fundamental rights within the penal system. Scholars have long argued that the death penalty and the treatment of death row prisoners must align with principles of human dignity, as stipulated by international law, including the International Covenant on Civil and Political Rights (ICCPR), to which Pakistan is a party (Amnesty International, 2021).¹ The evolving jurisprudence of the Supreme Court reflects this alignment, fostering a more balanced approach to justice that accounts for the rights of the accused, even in cases involving the most severe forms of punishment.

However, the implementation of such reforms presents significant challenges. Pakistan's overcrowded and underfunded prison system has long struggled to meet basic standards of humane treatment for its prisoners, with death row inmates often bearing the brunt of systemic inefficiencies (Cheema, 2012).² This paper will explore these challenges while assessing the broader implications of the Supreme Court's ruling. In doing so, it will contribute to the ongoing debate on criminal justice reform and human rights in Pakistan, providing a legal and ethical framework for future reforms.

II-Constitutional Background:

Article 4 of the Constitution of Pakistan serves as a foundational principle, guaranteeing that every citizen shall be treated in accordance with the law.

¹ Amnesty International. (2021). *Global report: Death sentences and executions*. Retrieved from <https://www.amnesty.org/en/documents/act50/3760/2021/en/>

² Cheema, M. H. (2012). *Pakistan's anti-terrorism laws: A case study of human rights violations in the context of the death penalty*. In N. K. Singh (Ed.), *Human rights and the death penalty in South Asia* (pp. 135-158). OUP Pakistan.

This provision ensures that no action detrimental to the life, liberty, body, or reputation of any citizen shall be taken except by the authority of law. In this context, condemned prisoners, despite their legal status, retain the right to be treated justly and in line with the rule of law. Their status as death row inmates does not strip them of the constitutional protections afforded to every other citizen of the country. The law, as enshrined in the Constitution, must be upheld without exception, ensuring that condemned prisoners are not denied these fundamental rights.

Article 9 of the Constitution further strengthens this principle by protecting the life and liberty of every citizen. It unequivocally states that no individual shall be deprived of life or liberty except in accordance with the law. This provision has been interpreted by the courts to extend to all citizens, including those sentenced to death, thereby ensuring that the treatment of condemned prisoners is subject to legal scrutiny and cannot be arbitrary or cruel. The life and liberty of death row prisoners, though limited by their sentence, must still be protected within the bounds of the law, and any deprivation must follow due legal process as mandated by the Constitution. This highlights the importance of legal safeguards even in cases involving the most serious punishments, ensuring that state actions remain lawful and humane (Khan, 2014).³

In addition, Article 14 of the Constitution guarantees the inviolability of human dignity, subject to law, underscoring that every person's dignity must be respected regardless of their circumstances. This article affirms that the dignity of condemned prisoners remains intact, even though they face the ultimate penalty. Their treatment while in custody must adhere to this constitutional mandate, and any conditions or actions that undermine their dignity are a violation of their constitutional rights. The principle of human dignity is a core value that cannot be compromised, ensuring that all citizens, including death row inmates, are treated with the respect they deserve under the law (Malik, 2016).⁴

³ Khan, H. (2014). *Constitutional and political history of Pakistan*. Oxford University Press.

⁴ Malik, S. (2016). *Human dignity and constitutional rights in Pakistan: An*

Thus, condemned prisoners, like every other citizen of Pakistan, are entitled to the protections of Articles 4, 9, and 14 of the Constitution. These provisions collectively reinforce the idea that even those convicted of the most serious crimes retain certain inalienable rights that must be respected by the state. The Supreme Court of Pakistan, in its recent rulings, has dilated upon the importance of upholding these rights, even in the administration of the death penalty, reflecting a commitment to ensuring that justice is tempered with humanity.

III- International Standards Applicable to Death Row Prisoners.

Pakistan has ratified seven out of the nine key United Nations treaties and conventions related to the humane treatment of prisoners, affirming its commitment to international human rights standards. This is particularly crucial given Pakistan's pursuit of the Generalized Scheme of Preferences Plus (GSP+) status, which provides trade incentives for countries that implement human rights and governance reforms in line with international norms. To fully benefit from the GSP+ scheme, Pakistan must ensure the implementation of these treaties in both letter and spirit, particularly with regard to the treatment of prisoners, including those on death row.

One of the most significant instruments in this regard is Article 6(1) of the *International Covenant on Civil and Political Rights (ICCPR)*, which guarantees the inherent right to life and asserts that no one shall be arbitrarily deprived of this right. The ICCPR also emphasizes that countries retaining the death penalty must apply it only under strict conditions, ensuring that due process and fair trial rights are upheld throughout the judicial process (Nowak, 2005).⁵ The importance of fair legal procedures, humane conditions of detention, and respect for the dignity of condemned prisoners is reinforced through the ratification of this covenant, reflecting Pakistan's obligations on the international stage.

analysis. Pakistan Law Review, 48(2), 215-234.

⁵ Nowak, M. (2005). *U.N. Covenant on Civil and Political Rights: CCPR Commentary (2nd ed.)*. N.P. Engel.

Additionally, Pakistan is a signatory to the *Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)*, which unequivocally prohibits any form of torture or ill-treatment of individuals, including prisoners. The CAT obliges state parties to prevent torture and other inhumane practices in all circumstances, and to ensure accountability when violations occur (Rodley & Pollard, 2019).⁶ For death row prisoners, this means that conditions of detention, including confinement in death cells, must meet humane standards that do not subject them to mental or physical suffering.

The *Convention on the Rights of the Child (CRC)* and the *Convention on the Rights of Persons with Disabilities (CRPD)* are also key components of Pakistan's human rights commitments. Under the CRC, the execution of individuals for crimes committed while they were minors is strictly prohibited, as it violates the fundamental rights of children to life, dignity, and humane treatment (Alston, 1994).⁷ The CRPD requires special consideration for the rights and treatment of prisoners with disabilities, ensuring that their specific needs are met, and that they are not subjected to discriminatory practices within the penal system (Degener, 2016).⁸

The Human Rights Committee's *General Comment No. 36* on Article 6 of the ICCPR, which discusses the right to life, further elaborates on state obligations concerning the death penalty. It underscores that capital punishment should be applied only in the most serious cases, with stringent safeguards to protect against arbitrary deprivation of life. The comment also stresses that conditions of detention for death row inmates must respect their dignity and provide for their

⁶ Rodley, N. S., & Pollard, M. (2019). *The treatment of prisoners under international law* (3rd ed.). Oxford University Press.

⁷ Alston, P. (1994). *The best interests of the child: Reconciling culture and human rights*. Oxford University Press.

⁸ Degener, T. (2016). Disability in a human rights context. *Laws*, 5(3), 1-24.

mental and physical well-being (Human Rights Committee, 2018).⁹

In addition to these international treaties, the *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty* are enshrined in ECOSOC Resolution 1984/50 and later elaborated in ECOSOC Resolution 1989/64. These safeguards outline key protections, including the right to a fair trial, legal assistance, and the right to appeal. They emphasize the importance of humane treatment of death row inmates, particularly regarding the conditions in which they are held prior to execution (Schabas, 1997).¹⁰ As a signatory, Pakistan is obligated to align its national laws and practices with these international standards, ensuring that prisoners' rights are protected throughout the legal process. By ratifying these conventions and resolutions, Pakistan has committed to a legal and moral framework that mandates the humane treatment of prisoners, including those facing capital punishment. The effective implementation of these international obligations is critical not only for protecting human rights but also for maintaining Pakistan's eligibility for trade benefits under the GSP+ scheme.

IV-Legal Framework

Section 30(2) of the *Prisons Act, 1894*, a law originating from the colonial era, mandates that prisoners sentenced to death must be confined in solitary cells, separated from other inmates. The provision states: "Every prisoner under sentence of death shall be confined in a cell apart from all other prisoners, and shall be placed, by day and by night, under the charge of a guard."¹¹ As a result, condemned prisoners are kept in these death cells immediately after their conviction by the trial court. They remain in these cells, often for many

years, while awaiting the outcome of their appeals before the higher courts. If their death penalty is overturned, they are released from the death cells; otherwise, they remain there until their execution is carried out in accordance with the court's decision.

Similarly, Rule 329 of Chapter 14 of the *Pakistan Prisons Rules, 1978*, as amended, outlines the procedure for prisoners sentenced to death. The rule stipulates that as soon as a prisoner receives a death sentence, the attending police officer at the trial is required to inform the Superintendent of the prison. In cases where the sentence is handed down by a Sessions Judge, the officer will issue a warrant of commitment, pending confirmation of the sentence by the High Court. Once the sentence is confirmed by the High Court or directly imposed by the High Court, a warrant of execution will be issued and sent either by the Sessions Judge or the High Court, as appropriate, to the Superintendent of the prison where the condemned prisoner is being held.¹²

V- Legislative Reforms through various Amendments:

Various provincial legislatures in Pakistan have introduced amendments to the *Prisons Act, 1894* and the *Pakistan Prison Rules*, leading to significant changes in the treatment of condemned prisoners. These amendments reflect a shift away from immediately placing death row inmates in death cells upon sentencing, instead reserving such confinement until their sentences become executable. Below are the details of the amendments made by the provincial assemblies:

a) Balochistan Amendment:

The *Prisons (Balochistan Amendment) Act, 2011* brought about key changes to Section 30 of the *Prisons Act, 1894*. The amendment to Section 30 reads as follows:

Sub-section (1) of Section 30 was amended by omitting the phrase "immediately on his arrival in the prison after sentence."

Sub-section (2) was replaced with: "Every such prisoner whose death sentence awarded by the trial court has been confirmed under section 376 of the *Criminal Procedure Code 1898* and becomes executable, shall be confined in a cell apart from

⁹ Human Rights Committee. (2018).

General comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life. United Nations.

¹⁰ Schabas, W. A. (1997). *The abolition of the death penalty in international law* (2nd ed.). Cambridge University Press.

¹¹ *Prisons Act, 1894, Section 30.*

¹² *Pakistan Prisons Rules, 1978, Rule 329*

all other prisoners and shall be placed by day and by night under the charge of a guard."

Additionally, a new sub-section (3) was added: "The prisoners who are sentenced to death by the trial court shall not be treated as condemned prisoners and shall not be confined in death cells by day and night, until their appeal is dismissed and/or the sentence of death is confirmed by the High Court or Federal Shariat Court, as the case may be" (*Prisons (Balochistan Amendment) Act, 2011*).¹³

b) Khyber Pakhtunkhwa Amendment:

In October 2010, the Khyber Pakhtunkhwa Assembly introduced amendments to the *Prisons Act, 1894*, whereby condemned prisoners were to be housed in separate barracks instead of death cells. The revised Section 30(2) states: "Prisoners under sentence of death shall be kept in separate barracks/cells instead of death cells, till the final decision on their appeals, and shall be placed by day and by night under the charge of a guard" (*Prisons (Khyber Pakhtunkhwa Amendment) Act, 2010*).¹⁴

c) Sindh Prisons and Corrections Services Act, 2019:

Section 40 of the *Sindh Prisons and Corrections Services Act, 2019* governs the placement of prisoners sentenced to death. It stipulates that such prisoners "shall be kept separate in such manner and conditions as may be prescribed by Rules." It is important to note that under Section 84 of this Act, both the *Prisons Act, 1894* and the *Prisoners Act, 1900* have been repealed (*Sindh Prisons and Corrections Services Act, 2019*).¹⁵

These amendments signify a move towards a more humane approach in handling condemned prisoners, ensuring that death row inmates are not subjected to death cell confinement until their sentences are confirmed by higher courts.

¹³ *Prisons (Balochistan Amendment) Act, 2011, Section 30.*

¹⁴ *Prisons (Khyber Pakhtunkhwa Amendment) Act, 2010, Section 30.*

¹⁵ *Sindh Prisons and Corrections Services Act, 2019, Sections 40 and 84.*

V- Jurisprudence Pertaining to Section 30(2) of the *Prisons Act, 1894*:

In 2010, the Federal Shariat Court declared Section 30(2) of the *Prisons Act, 1894* to be *ultra vires* to the injunctions of Islam in the landmark case of *Dr. Muhammad Aslam Khaki vs. The State & Others* [PLD 2010 FSC 1]. The court examined the timing of when a convict should be considered a condemned prisoner and the inhumane conditions in which death row inmates are held. Below is a summary of the relevant portions of the judgment:

The court observed that although a Sessions Judge can pass a death sentence, it is subject to confirmation by the High Court, a process that typically takes several years. Even if the High Court confirms the sentence, the condemned prisoner has the right to appeal to the Supreme Court, where acquittal is still possible. Additionally, the prisoner may seek a pardon, reprieve, or commutation of the sentence. It is only after the President of Pakistan rejects the convict's mercy petition that the death sentence becomes final and executable. The court noted that there had been instances in 1988 and 2008 where the federal government considered converting death sentences to life imprisonment.¹⁶ The judgment highlighted that the process from conviction to final execution often takes around ten years, during which time the condemned prisoner endures immense psychological and emotional strain. Given this lengthy delay, the court questioned when a convict should be considered a "condemned prisoner." It concluded that a convict should not be classified as a condemned prisoner immediately after sentencing by the trial court, as the sentence is not yet executable until it is confirmed by the High Court. The court emphasized that reducing the agony of condemned prisoners to the minimum necessary period is essential.¹⁷

Moreover, the court addressed the harsh living conditions faced by condemned prisoners. It noted that in many prisons, up to five to seven condemned prisoners were confined in a cell measuring 108 square feet, which provided only

¹⁶ *Dr. Muhammad Aslam Khaki vs. The State & Others, PLD 2010 FSC 1, para. 131.*

¹⁷ *Ibid., para. 132-133.*

15 square feet per person—conditions described as "inhumane." Even when only one prisoner occupies a death cell, the extended solitary confinement constitutes an additional punishment beyond the prison sentence, which contravenes Sections 73 and 74 of the *Pakistan Penal Code*.¹⁸

The court further referred to Article 13 of the Constitution, which guarantees protection against double punishment. It argued that the additional punishment of solitary confinement and strict surveillance, combined with the lack of privacy in death cells, violated this constitutional right. Condemned prisoners often had to use makeshift washrooms in the same small space where they lived, which deprived them of human dignity.¹⁹

The court cited Ayat 70 of Surah 17 of the Holy Qur'an, which affirms the dignity of every human being, and emphasized that Article 14 of the Constitution guarantees the inviolability of human dignity. The compulsion for condemned prisoners to use cramped living quarters as toilets in the presence of others was seen as a gross violation of their dignity and privacy. The court also referenced Ayat 58 and 59 of Chapter 24 (Surah An-Nur) of the Qur'an, which stresses the importance of personal and family privacy, observing that violations of privacy could lead to moral degradation.²⁰

In the case of *Kehar Singh and Another vs. The State and Others*, the court held that a prisoner can only be considered "under sentence of death" when the death sentence has passed beyond judicial scrutiny and become executable without any intervention from any other authority. Until that point, a person who has been sentenced to capital punishment cannot be classified as a "prisoner under sentence of death" within the context of Section 30(2) of the *Prisons Act, 1894*. This interpretation is crucial in understanding when the legal status of a condemned prisoner truly begins.²¹

Similarly, in *Sunil Batra vs. Delhi Administration*, the Supreme Court of India held that prisoners "under sentence of death" should

not be denied community amenities, such as access to games, newspapers, books, or visits, subject to reasonable prison regulations. The court noted that Section 30 of the *Prisons Act* does not serve as a substitute for a sentence of imprisonment but merely organizes the custody of prisoners in a safe manner as authorized by Section 366 of the *Code of Criminal Procedure*. The court emphasized that, if a prisoner desires solitude for reflection, prayer, or meeting family and friends, such requests should be granted liberally, given the emotional strain they face during the last phase of their lives.²²

The court further clarified the meaning of "under sentence of death" under Section 30(2). It ruled that a person is not "under sentence of death" simply because the Sessions Court has awarded the death penalty. The prisoner remains outside this classification as long as there are pending judicial reviews, including appeals to the High Court or the Supreme Court. Even after a capital sentence is confirmed by the Supreme Court, the prisoner is not considered "under sentence of death" until all avenues for mercy, including petitions to the Governor or President, are exhausted. Once these have been denied, and there is no stay of execution, the prisoner is then classified as "under sentence of death" and may be segregated in accordance with Section 30(2).²³

Importantly, the court highlighted that Section 30(2) does not grant prison authorities the power to impose solitary confinement on prisoners under sentence of death. Solitary confinement, even as a disciplinary measure, is restricted by law. It is well-established that convicts, despite their incarceration, retain fundamental rights under the Constitution, including the right to life and personal liberty under Article 21. The court held that the liberty to interact, move, and socialize with fellow prisoners cannot be curtailed without legal justification, and any deprivation of personal liberty must be backed by law. Section 30(2) must be interpreted in light of this judgment to ensure it does not infringe on these constitutional rights.²⁴

¹⁸ *Ibid.*, para. 134.

¹⁹ *Ibid.*, para. 135.

²⁰ *Ibid.*, para. 136.

²¹ *Kehar Singh and Another vs. The State and Others*, 1987 CRILJ 291, para. 20.

²² *Sunil Batra vs. Delhi Administration*, AIR 1978 Supreme Court 1675, para. 393.

²³ *Ibid.*, para. 394.

²⁴ *Ibid.*, para. 395.

VI- Recent Supreme Court Ruling in Ghulam Shabbir versus State (Criminal Review Petition No. 103 of 2017 IN Criminal Appeal No. 643 of 2009):

Justice Jamal Khan Mandokhail, leading a three-member bench, has recently authored a landmark judgment that marks a significant step forward in the protection of human rights for condemned prisoners. In a notable criminal review petition involving Gulam Shabir, who had languished in a death cell for an astounding 34 years, Justice Mandokhail illuminated the severe inhumane conditions and prolonged delays that condemned prisoners endure. His judgment sheds critical light on the distressing plight faced by individuals who, despite serving sentences far beyond life terms, continue to suffer from the uncertainty and mental anguish of extended incarceration in death cells.

Justice Mandokhail's ruling addresses the fundamental issues of justice and humanity, pointing out that delays in executing death sentences—often caused by outdated laws and systemic faults beyond the prisoners' control—constitute a form of double jeopardy. This practice, as described by Justice Mandokhail, is not only legally indefensible but also a violation of natural justice principles. The judgment unequivocally asserts that condemned prisoners, like all other citizens, are entitled to lawful treatment and equal protection under Article 4 and the right to dignity under Article 14 of the Constitution.

The Supreme Court's ruling, under Justice Mandokhail's guidance, calls on both Federal and Provincial Governments to urgently review and reform prison laws, ensuring they are modernized and aligned with constitutional mandates and international treaties concerning prisoners' rights. This groundbreaking judgment not only advances the cause of human rights within Pakistan's legal framework but also reflects Justice Mandokhail's unwavering commitment to justice and dignity for all individuals, regardless of their legal status.

a) Facts of the Case:

In the case at hand, convicted Ghulam Shabir was arrested following the registration of FIR No. 243 on July 15, 1990, which charged him with the murder of two individuals and the infliction of severe injuries on two others. After a thorough

trial, the court rendered its verdict on December 7, 1994, convicting Ghulam Shabir under Section 302(b) of the Pakistan Penal Code (PPC) for the murders and sentencing him to death on two counts. Additionally, he was sentenced to rigorous imprisonment for five years on two counts under Section 307 PPC for the injuries inflicted.

Subsequently, Ghulam Shabir filed a criminal review petition, arguing that he had already served a sentence equivalent to life imprisonment and requested that his death sentence be commuted to life imprisonment.

b) Contentions of the Petitioner:

The counsel for the petitioner argued that Section 302(b) of the Pakistan Penal Code (PPC) stipulates two possible sentences: death or life imprisonment as Tazir. Despite the petitioner being sentenced to death on two counts, the counsel pointed out that Ghulam Shabir had already served 26 years in prison without remissions—surpassing the duration of a life sentence. The counsel's argument is based on the premise that once an individual has served a sentence, they should not be subjected to an additional sentence for the same offense.

The counsel asserted that the Court, in adjudicating the petitioner's criminal appeal, failed to consider the principles established in the cases of Dilawar Hussain, Hassan, and Khalid Iqbal. According to the counsel, these precedents dictate that the petitioner's sentence should be commuted from death to life imprisonment in accordance with the legal reasoning set forth in those judgments.

c) Discussion:

The Court has carefully reviewed the arguments and case records. It is established that since his arrest on July 16, 1990, Ghulam Shabir has served over 34 years in prison, including approximately 24 years in a death cell. This prompted a re-evaluation of his case in light of established precedents.

In *Dilawar Hussain vs. The State*²⁵, the Court addressed a situation where the convict had served 25 years, including 18 years in a death cell, before the appeal was resolved. The Court ruled that the extensive detention, which effectively constituted a life sentence, warranted a

²⁵ 2013 SCMR 1582

reconsideration of the death penalty. The death sentence was thus commuted to life imprisonment.

Similarly, in *Hasan vs. The State*²⁶ the Court noted that the convicts had spent approximately 22 years in death cells, which exceeded the duration of a life sentence. The Court observed that maintaining the death sentence in such cases could be deemed oppressive given the extensive delay and equivalent time served. As a result, the death sentences were reduced to life imprisonment.

In the present case, following these precedents, the Court found that Ghulam Shabir's lengthy incarceration, which surpasses a life sentence, justified converting his death sentence to life imprisonment. This decision aligns with the principles of justice and fairness as established in *Dilawar Hussain* and *Hasan*.

In *Sikandar Hayat vs State*²⁷ the Court reiterated the principle established in *Dilawar Hussain*, recognizing that delays in resolving a case can serve as a mitigating factor warranting the reduction of a death sentence to life imprisonment. The Court acknowledged that when a convict has remained in custody for a period equal to or longer than a life sentence, this prolonged detention should be considered in favor of commuting their death sentence.

In contrast, *Khalid Iqbal v Mirza Iqbal*²⁸ distinguished its approach from that in *Dilawar Hussain*, emphasizing that while delay in execution is significant, it must be evaluated alongside other mitigating factors. The Court agreed that, based on the principles in *Dilawar Hussain*, a convict who has endured extended detention, effectively serving a life term, should not face a death sentence.

d) Key Aspects of the Ruling:

i. Expectancy of Life

Justice Mandokhail, while adopting the "Rule of Expectancy of Life," emphasized that when a convict sentenced to death has faced inordinate delays in the execution of his sentence, the court should exercise its discretion to convert the death sentence into life imprisonment. This rule is

grounded in the recognition that prolonged uncertainty regarding the execution of a death sentence, especially due to systemic inefficiencies, imposes undue psychological and emotional suffering on the convict, amounting to a form of double punishment.

Justice Mandokhail further observed that the delay in finalizing a convict's fate is often caused by the slow functioning of state institutions, including the judiciary and the executive. The overburdened courts and the inefficient processing by the executive result in convicts spending excessive periods on death row, waiting for an uncertain execution. Justice Mandokhail took a firm position, stating that such delay, whether due to judicial backlogs or administrative negligence, should not be attributed to the convict, as they are not responsible for the delay.

Thus, the Court considered this prolonged period of uncertainty and suffering as a mitigating factor. In the case at hand, the Court exercised its discretion in favor of the convict, applying the "Rule of Expectancy of Life" to commute the death sentence to life imprisonment. This positive use of judicial discretion is rooted in the idea that the convict's life expectancy becomes relevant when they have already served a period of detention that would have amounted to life imprisonment. The Court's ruling ensured that the convict was not punished twice for the same crime, taking into account that the time spent in detention had already fulfilled the requirements of a life sentence under the law.

By implementing the Rule of Expectancy of Life, the Court upheld a humane and just approach to punishment, acknowledging the mental and physical toll of prolonged incarceration on death row. The judgment reflects the Court's recognition of its duty to address systemic failures and provide relief to convicts in such extraordinary circumstances, where the state's delay in administering justice becomes a significant factor in deciding the final outcome of the sentence.

ii. Court's reasoning and interpretation of the law:

The court's judgment was rooted in a combination of constitutional rights, legal precedents and international human rights standards. One of the core aspects of the ruling was the reliance on the Federal Shariat Court's

²⁶ PLD 2013 SC 793

²⁷ PLD 2020 SC 559

²⁸ PLD 2015 SC 50

earlier declaration, which stated that holding ii. condemned prisoners, those whose appeals or judicial reviews are pending in harsh and prolonged conditions, is inconsistent with the injunctions of Islam as declared by the Federal Shariat Court.

In support of its ruling, the court invoked Article 4 and Article 14 of the Constitution of Pakistan. Article 4 guarantees that every person is entitled to the protection of law and must be treated fairly and in accordance with legal principles. The court interpreted this provision to mean that even prisoners sentenced to death have a right to be treated lawfully, and the delays in the judicial system should not lead to further undue suffering. Article 14, which emphasizes the dignity of man and the prohibition of torture or degrading treatment, was also central to the court's reasoning. The court held that keeping prisoners on death row in inhumane conditions for extended periods violated their constitutional right to dignity and protection from cruel and unusual punishment.

Additionally, the court drew upon the "United Nations Standard Minimum Rules for the Treatment of Prisoners", known as the "Mandela Rules", which set global benchmarks for the humane treatment of prisoners. Since Pakistan had ratified these rules, the court noted that the country was bound by international obligations to ensure that its prison system complied with these standards. This included the responsibility to protect prisoners from inhumane treatment and to provide humane living conditions, particularly for those awaiting execution.

The Court's reference to the "Mandela Rules" underscored Pakistan's international commitments to uphold the dignity and rights of prisoners, aligning the domestic legal framework with global human rights norms. By integrating these constitutional, Islamic and international legal standards, the court highlighted the importance of treating even the most serious offenders with dignity and fairness. The judgment aimed to ensure that condemned prisoners are not subjected to prolonged, unjust suffering due to systemic delays, affirming the court's commitment to both constitutional and human rights.

Specific orders regarding the housing of death row prisoners:

The court held and ordered that it is a high time for both the Federal Government and the Provincial Governments to reconsider the outdated prison laws which need to be modernized and align with international standard and Islamic injunctions. The Court declared that all the prisoners need fair treatment and entitled to the equal protection of law. The court emphasized that in order to maintain the human identity and respect, personal values of the condemned prisoners should be respected; and directed that to ensure the complete protection of their constitutional rights, government should provide a safe atmosphere.

v. The Balance between Justice and Human Rights:

This judgment of the Supreme Court aimed to strike a balance between justice and human rights, with a central focus on the fundamental right to life, as guaranteed under Article 9 of the Constitution of Pakistan. The court emphasized that even condemned prisoners, despite their convictions, possess an inalienable right to be treated with dignity. Their right to life must be protected, and they should not be subjected to inhumane or degrading conditions during their incarceration.

The court's ruling underscored that the death penalty, while part of the legal framework, does not negate the essential human dignity of those sentenced. Therefore, ensuring the protection of life and humane treatment remains a priority, even for those awaiting execution. The judgment represents an effort to uphold constitutional protections and prevent the unjust treatment of prisoners within the criminal justice system.

v. Ethical implications of the ruling on the treatment of prisoners:

The ethical implications of the Supreme Court's ruling on the treatment of prisoners are profound, reflecting a commitment to upholding human dignity, justice, and moral responsibility within the criminal justice system. The ruling asserts that even condemned prisoners retain their fundamental human rights, emphasizing the ethical principle that all individuals, regardless of their crimes, must be treated with respect and dignity. This reinforces the notion that the worth

of a human being does not diminish because of their legal status, aligning with broader ethical standards of human rights.

The judgment also highlights the state's accountability in ensuring humane conditions for prisoners, stressing the government's ethical obligation to protect those under its care. This responsibility goes beyond legal duties, encompassing a moral commitment to avoid inhumane or degrading treatment, particularly in cases where prisoners endure prolonged stays in death cells. The court's emphasis on addressing the delays in execution as a mitigating factor underscores the ethical stance against excessive punishment and promotes justice and fairness. This approach ensures that prisoners are not subjected to unjust punishment for delays that are beyond their control, reinforcing principles of equity and humane treatment.

Incorporating international ethical standards, such as the Mandela Rules, into the ruling further demonstrates Pakistan's commitment to aligning its treatment of prisoners with global human rights norms. This reflects an ethical consistency with international expectations, promoting a system that values compassion and humanity, even for those convicted of serious crimes. Lastly, the judgment calls for the modernization of outdated prison laws, urging the government to adopt a more just and ethically responsible legal framework. This approach ensures that governance reflects not only punitive measures but also rehabilitative and humane considerations, in line with both constitutional and Islamic principles. Overall, the ruling emphasizes the need for a criminal justice system that balances justice with humanity, ensuring dignity and fairness for all.

VII- Conclusion:

In conclusion, the Supreme Court's ruling on the treatment of condemned prisoners marks a pivotal moment in the advancement of human rights within Pakistan's legal system. By emphasizing the fundamental right to life, dignity, and humane treatment, the court underscores the ethical and constitutional responsibilities of the state. The judgment promotes a balanced approach to justice, ensuring that even those sentenced to death are not deprived of their humanity or subjected to inhumane conditions.

Furthermore, the court's emphasis on modernizing outdated prison laws and aligning them with international standards, such as the Mandela Rules, opens the way for future reforms in the country's justice and prison systems. This decision not only reaffirms the inalienable rights of prisoners but also sets a precedent for ongoing legal reform, encouraging the state to take progressive steps toward ensuring that justice is served with fairness, compassion, and respect for human dignity.

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