



The EU's Campaign to Abolish the Death Penalty: Pressure on Pakistan

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Abstract

Capital punishment has been in use since ancient times as punishment for intentional murder or other serious crimes; the aim was to protect the lives and property of people and to preserve peace in society. With advancement in the standard of human rights after the two great wars of the twentieth century, over the decades, human rights organizations have been making intense efforts for complete abolishment of the death penalty, which is now being increasingly seen as a challenge to human rights and human dignity. This paper discusses the death penalty within the context of Pakistan's relations with the European Union. The latter has abolished it completely inside its borders while Pakistan still retains it. The EU strongly opposes the death penalty in all circumstances, and its abolition all over the world is a foremost priority of its external human rights policy. The EU does not hesitate to use its diplomatic and political weight to encourage countries to join the ranks of the abolitionists. It has been funding campaigns to increase awareness of the need to abolish capital punishment. The EU's institutions, including the European Parliament frequently adopt resolutions condemning countries that continue to impose capital punishment and they host debates to convince the world to follow in their footsteps. Owing to the heated international debate on capital punishment and efforts by human rights organizations to secure the universal abolition of the death penalty, the issue has also been a subject of discussion in Pakistan. In this regard, the country is facing both external and internal pressures. The European Union, the biggest trade partner of Pakistan, continues to urge Pakistan to halt all executions, as capital punishment violates the international human rights conventions.

Key words: Capital punishment, European Union, Pakistan, abolitionist, retentionist

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Introduction

Any punishment meted out by the state is meant to reinforce the established moral values of society as well to reduce crime by encouraging law-abiding behaviour among people. However, punishment is not just a means of reducing crime, meting out justice to the offender and compensating the victim; it also characterizes “collective societal reaction in such a situation”.¹ Established societies use both positive and negative methods, sometimes concurrently, to regulate human behaviour; punishment focuses on reducing or getting rid of unwanted behaviour. Punishment inevitably involves some kind of loss and /or pain for the person who has committed a crime. In other words, punishment involves treatment that causes pain. For instance, imprisonment curtails the criminal’s freedom of movement. Not being able to freely meet family and friends can be a painful experience.

The death penalty or capital punishment is the ultimate form of punishment that means the execution or intended execution of a convicted criminal by the state. This punishment is usually meted out to persons who have committed the most heinous crimes known as capital crimes. The word Capital has roots in the Latin word *capitalis*, which means "of or relating to the head".

However, it is believed by some that there is a clear difference between the two terms. Death penalty refers to the sentence pronounced by the judiciary, which may not necessarily lead to its implementation. Capital punishment refers to the actual execution itself. The Columbia Encyclopedia in its sixth edition (2008) defined capital punishment as the imposition of death penalty by the state.²

With the world having undergone unprecedented death and destruction during the two World Wars, international organizations, such as the League of Nations* and particularly its successor the United Nations set up organizations and adopted several conventions relating to the laws of war

¹ The Rede Lecture, *What is Punishment for and how does it relate to the Concept of Community?* (Cambridge: Cambridge University Press, 1990)

* The League set up a Minority Committee and a Mandate Commission to hear complaints from minorities living under the League’s Mandatory system.

² Encyclopedia Britannica, “What is the Death Penalty?”, ProCon.org (25April 2008) <https://deathpenalty.procon.org/questions/what-is-the-death-penalty/>

and human rights. The UN Charter of Human Rights emphasizes first on the Right to Life.

Among the countries that were the first to abandon the use of capital punishment were Venezuela (1863), Costa Rica (1877), and San Marino (1865). By 2004, 81 countries, including member states of the EU completely abolished the death penalty. Some other countries restricted capital punishment only for treason and war crimes, while in others, death remained a penalty in law, though in practice there had not been any executions for decades.³

The UNGA adopted the Universal Declaration of Human Rights on 10th December, 1948 in Paris. This declaration does not specifically mention the death penalty, but its Article 3 states "Everyone has the right to life, liberty and security of person". Article 5 declares "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." These articles imply the unacceptability of the death penalty.⁴

The need to abolish the death penalty was explicitly mentioned in some very important international agreements under UN agencies. These are: The International Covenant on Civil and Political Rights (ICCPR 1966). Article 6 of this document states: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.... In countries which have not (yet) abolished the death penalty, sentence of death may be imposed only for the most serious crimes...."⁵

The death penalty is prohibited for persons who had not attained the age of eighteen at the time of the commitment of the crime. Pregnant women too cannot be awarded the death penalty. Likewise, executions that are carried out as a part of genocides are banned.

The other international agreement, a continuation of the ICCPR, is the Second Optional Protocol to the International Covenant on Civil and Political Rights, which was adopted by UN General Assembly on 15th December 1989.

³ Ibid

⁴ "Universal Declaration of Human Rights", *United Nations*, https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

⁵ Human Rights Committee, "International covenant on civil and political rights", *United Nations* (3 August 2004) <https://www.refworld.org/pdfid/42ce6b7a4.pdf>

It reiterated the need to abolish the death penalty, but allowed states to hold on to the option of death penalty in times of war. Countries that accede to the declaration have to specifically seek permission for such a derogation.

The Deterrence Theory

The deterrence theory of punishment can be traced to the early works of classical philosophers such as Thomas Hobbes (1588–1678), Cesare Beccaria (1738–1794), and Jeremy Bentham (1748–1832). Together, these theorists protested against the legal policies that had dominated European thought for more than a millennium, and against the spiritualistic explanations of crime on which they were founded.⁶

The Deterrence theory is both a micro- and macro-level theory. The concept of specific deterrence claims that persons who commit crimes and are caught and punished are dissuaded from committing more crimes. On the other hand, general deterrence rests on the premise that the general population would be afraid of engaging in criminal activity once they are aware that others have been apprehended and punished. However, both specific and general deterrence, rests on the individual's perceptions regarding severity, certainty, and dispatch of punishment.⁷

History of Capital Punishment

Death Penalty in Europe

The Babylonian King Hammurabi (18th century B.C) codified the death penalty for 25 different offences.⁸ The Hittite Code of 14th century B.C also included the death penalty for various offences. The Greek city-state of Athens of the seventh century B.C had the most draconian code. It declared death as the only punishment for all crimes. The Twelve Tablets of Rome in the fifth century B.C also endorsed the death penalty. Those sentenced to death faced horrific death: they were either crucified, drowned, beaten to death, burned alive, or impaled. In Britain, in the tenth century A.D., hanging was the most widely used form of execution. The Norman King, William the

⁶ John J. Dilulio, "Deterrence Theory" (1959) <https://marisluste.files.wordpress.com/2010/11/deterrence-theory.pdf>

⁷ Kelli D. Tomlinson, "An Examination of Deterrence Theory: Where Do We Stand?", *Federal Probation*, Vol 80, No. 3(December 2016) https://www.uscourts.gov/sites/default/files/80_3_4_0.pdf

⁸ "History of the Death Penalty", *The Death Penalty* <https://infodeathpenalty.weebly.com/history-of-the-death-penalty.html>

Conqueror (1066-1087 AD) prohibited hanging or execution for any crime in Britain. He and his immediate successors allowed executions only in times of war. This trend however, did not last, and in the 16th century, under the reign of the Tudor King Henry VIII, around 72,000 people were executed, including two of his queens- Anne Boleyn and Catherine Howard.⁹

Some modes of execution in use at that time were very brutal. Among the capital offences for which capital punishment was meted out were: marrying a Jew, withholding confession to a crime, and treason against the crown. The list of capital crimes in Britain increased during the next two centuries. By the 1700s, British law declared 222 crimes as being punishable by death. The list included petty offences. Eventually there was an outcry against the death penalty in Britain. Thus between 1823 to 1837, of the 222 crimes that had been punishable by death, 100 were removed from the list. In France, in the eighteenth century, state authorities sought a quick and relatively painless method of execution. Thus, the guillotine, named after physician Joseph Ignace Guillotin, its inventor, began to be used for executions in most cases. When the Reign of Terror began during the French Revolution, the Guillotine was declared the only official mode of execution in France on March 20, 1792.¹⁰ The deposed King Louis XVI and his queen Marie Antoinette were guillotined after being found guilty of trying to sabotage the Revolution. The use of the Guillotine in France begun during the French Revolution continued until capital punishment was abolished in the country in 1981.

The Death Penalty in Pakistan

In Pakistan in 2018, there were over 8000 people on the death row.¹¹ This was amongst the largest death row population in the world. Pakistan's death row prisoners constituted over 10 percent of the total prison population. Interestingly, 63 years ago only murder and treason were punishable by death in the country. It appears that the list of offences punishable by death has steeply risen over the decades. Inmates of the death

⁹ "History Of The Death Penalty: Early History of the Death Penalty", *Death Penalty Information Center*, <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty>

¹⁰ "The Guillotine is adopted as the Revolution's official means of execution", *World History Project* <https://worldhistoryproject.org/1792/3/20/the-guillotine-is-adopted-as-the-revolutions-official-means-of-execution>

¹¹ Ashraf Javed, "Country's death-row population increases to 8,000", *The Nation* (28 May 2018) <https://nation.com.pk/28-May-2018/country-s-death-row-population-increases-to-8-000>

row in Pakistan spend an average of 10 years in prison before they are executed, usually by hanging.¹²

While in Pakistan some other modes of execution are allowed legally, in practice, hanging is the only mode of execution. With the passage of the Hudood Ordinance by the Zia regime in 1979, stoning to death became applicable for certain offences. The Supreme Court ruled in 2002 that if an offense evokes a retributive punishment stipulated by religion, the punishment ought to match the crime. Thus, some bizarre sentences have been pronounced such as death by mutilation and acid. By and large hanging is the only method of execution which has been actually used for capital punishment. In 2006, the ordinances which provided for stoning to death for those sentenced for rape or adultery were modified through legislation. The fact is that stoning to death has never really been practiced since introduction of the law deriving from the earlier ordinances in 1990.¹³

Present day Europe and capital punishment

In the European context, the Council of Europe*, a non-EU institution, dedicated to the uplift of human rights, adopted the Convention for the Protection of Human Rights and Fundamental Freedoms on 28th April, 1983, which came into force on 1st April 1985. The Convention's broad aim is to protect and promote democracy, human rights and the rule of law. The Convention's Protocol No.6, calls for the abolition of the death penalty, but like the Protocol of the ICCPR, allows countries to apply it in times of war or the imminent threat of war, but this should not contravene their own laws or constitutions.

The Council of Europe on 3rd May 2002 through its Protocol No.13 to the Convention for the Protection of Human Rights and Fundamental Freedoms completely abolished punishment by death under all circumstances. All member states of the Council of Europe have signed the Convention for the Protection of Human Rights and Fundamental Freedoms. All EU member states are members of the Council of Europe.

¹² Reprive, "The Pakistan Capital Punishment Study", *Foundation for Fundamental Rights* (March 2019) <https://reprive.org.uk/wp-content/uploads/2019/04/Pakistan-Capital-Punishment-Study.pdf>

¹³ "Pakistan", Death Penalty Database (4 April 2011) www.deathpenaltyworldwide.org/country-search-post.cfm?country=Pakistan

Belarus, a former Soviet republic and the Russian Federation are among the countries in Europe which have retained the death penalty. Both are not a member of the European Union. At present, Russia has retained a moratorium on capital punishment first introduced in 1996 by the then President Boris Yeltsin. In 1999, the Constitutional Court of Russia, endorsed the moratorium. It was reaffirmed in 2009. Since 1996 there have been no executions in Russia. The Russian Federation is a member of the Council of Europe. It is noteworthy that Belarus is also the only European country that is still not a member of the Council of Europe, and therefore is not morally obliged to sign the Council of Europe's European Convention on Human Rights.¹⁴ The EU has repeatedly called on Belarus to abolish the death penalty. The last death sentence was pronounced in 2020. Belarus is still defiant and has not abolished the death penalty.

The EU

Regarding the EU, it must be noted that in the original treaties of the European Communities one finds no reference to the protection of human rights and fundamental freedoms. This is so because among the original objectives and purposes of the EC, the protection and promotion of human rights were not included. The protection and promotion of human rights and fundamental freedoms was dealt with by a separate European institution – the Council of Europe.

A shift came with the Single European Act of 1986, which in its preamble mentions the protection of human rights and fundamental freedoms in pursuance of the aim of forming the Single European Market. Though this move partly reflected an altered international environment, it also reflected the dynamics of the process of European integration. The Single European Act of 1986 highlighted that the European Community member states must adhere to the principles of democracy and assure compliance with the body of human right laws and conventions to which they are attached, in order to

* The Council of Europe was formed in 1949, with the signing of the Treaty of London. The Council of Europe has 47 member states, 28 of whom are also members of the EU. The organization has as its members several states belonging to the former Soviet Union and the former Soviet bloc in East Europe. Many of the states are not members of the EU. The Russian Federation too is a member.

¹⁴ Jennifer Thomas, "The Influence of European Union Policy on Capital Punishment in the United States Judicial System", (Western Kentucky University, 2012) https://digitalcommons.wku.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1377&context=stu_hon_theses

preserve international peace and security. The landmark Treaty on European Union or the Maastricht Treaty in its text mentioned the protection of human rights, but there was no direct reference to the death penalty. When the Amsterdam Treaty (1997) revised the earlier treaty, it contained a declaration on the abolition of the death penalty. The declaration noted that capital punishment had been suspended in member states and the latter now have to follow it with formal repeal.¹⁵

The European Union is now among the leading institutional actors in the campaign against the death penalty worldwide and this has become a priority of its external human rights policy. This policy has evolved and matured over the years.

The Charter of Fundamental Rights of the European Union was presented in the year 2000. The declaration was attached to the Nice Treaty (2001) as a political declaration of a non-binding nature. Later, through the Lisbon Treaty (2007) established that the Charter's provisions shall have the same legal value as the EU treaties. It became the primary source of European Union law. It is now a separate document formally and not a part of the Lisbon Treaty.

The European Union thus holds a strong and principled position against the death penalty; its abolition is a major objective in the Union's human rights policy. Abolition of the death penalty is, also a pre-condition for membership of the Union. Turkey which has been an aspirant for membership of the European Union for a long time, abolished the death penalty in 2004* and it has stopped all execution since October 1984.

The Contemporary Scenario Regarding Capital Punishment in Pakistan

Since 2008 there was a de facto moratorium on executions in Pakistan.¹⁶ In 2014, the government lifted its moratorium on the death penalty, thus earning the questionable distinction of becoming one of the world's leading executioners. However, the lifting of the moratorium cannot be considered a willful act of the Pakistan government, in the light of the brutal terrorist

¹⁵ Rudolf Hnidka, "European Perspective and legal framework of death penalty", *Challenges of the Future* vol 1, no.4 (November 2016) https://www.fos-unm.si/media/pdf/ip/death_penalty_hnidka_10.pdf

¹⁶ "Pakistan: Restore Death Penalty Moratorium", *Human Right Watch* (16 September 2014) <https://www.hrw.org/news/2014/09/16/pakistan-restore-death-penalty-moratorium>

attack on school children at the Army Public School in Peshawar on 16 December 2014. Pakistan was now left with no choice but to lift the six-year de facto moratorium on the use of the death penalty. The lifting of the moratorium was first applied only to terror-related cases but then, from March 2015, it was applied in all capital cases. The government strongly believed that the only effective way to combat the scourge of terrorism was the application of capital punishment. Generally, public opinion in Pakistan, viewed the lifting of the moratorium in the broader context of Pakistan's fight against terrorism and militancy.

However, a quick survey of the data of executions carried out in Pakistan, raises questions with regard to this narrative. The Human Rights Commission of Pakistan (HRCP), an NGO, reported that altogether 389 death row convicts were executed since mid-April 2016. Forty-nine of those convicted were tried by the Anti-Terrorism Courts (ATCs) and 12 by military courts. The HRCP data, attempted to prove that only around 10 percent of those executed in the country were involved in or accused of terrorism, while 73 percent had no connection to terrorism.¹⁷

According to a report of the Amnesty International, prison officials had revealed to a monitoring group that on the execution in prison of a member of the proscribed militant group Lashkar-e-Jhangvi, the latter distributed sweets to celebrate the 'martyrdom' of their comrade.¹⁸ In recent decades, there is widespread realization that terrorists have no fear of death, the way normal human beings do, for they welcome it as martyrdom.

EU Pressure on Pakistan for the Abolition of the Death Penalty

The Political and Security Council endorsed The EU Guidelines on Death Penalty on 12 April 2013¹⁹, that provided several tools for systematic EU action including bilateral diplomacy, action in multilateral forums and cooperation assistance. With consensus among all EU member states on the issue, European institutions work towards the abolition of the death penalty

¹⁷ Madiha Batool, "Pakistan and the Death Penalty", *The Diplomat* (21 April 2016) <https://thediplomat.com/2016/04/pakistan-and-the-death-penalty/>

¹⁸ Ali Mohsin, "Capital Punishment In Pakistan", *Countercurrents.org* (20 February 2016) <https://www.countercurrents.org/am200216.htm>

¹⁹ Council Of The European Union, "EU Guidelines on Death Penalty: Common Guidelines", *The European Union* (12 April 2013), data.consilium.europa.eu/doc/document/ST-8416-2013-INIT/en/pdf#:~:text=The%20EU%20considers%20that%20the,campaign%20against%20the%20death%20penalty

all over the world, particularly in partner countries, persuading the latter, if necessary, to impose a moratorium as a first step. In countries where the death penalty still survives, the EU calls for its use to be increasingly restricted and insists that it be carried out according to minimum international human rights standards.²⁰

In 2005, the EU introduced a scheme in which low and lower-middle income countries could be given preferential trade arrangements in exchange for ratifying and implementing 27 international conventions on human and labour rights, environmental protection and good governance. This Generalized Scheme of Preferences Plus (GSP+) offers some real benefits to countries, in the economic as well as the social realms. GSP+ has stimulated the training and resourcing of institutions responsible for implementing and monitoring international conventions.²¹ Much before the GSP+ scheme was launched, the EU began to insist that its partners should sign the international conventions on human rights, and adhere to the international human rights regime.

The European Union is the foremost trade and economic partner of Pakistan. The EU-Pakistan Five Year Engagement Plan is guided by the Joint statements issued after the EU-Pakistan summits held on 17 June 2009 and 04 June 2010. The aim of the Five-Year Engagement Plan is to build a strategic relationship between the two sides by forging a partnership for peace and development rooted in shared values, principles and commitments.²²

With the launch of the GSP+ scheme the matter of human right, particularly the death penalty assumed more urgency. In 2013, a European Union human rights delegation in its talk with Pakistan government officials warned that a resumption of executions would be seen as a “major setback” in Pakistan’s negotiations with the EU on the award of the GSP+ status. The European Parliament was at that time scrutinizing the country's application for preferential trade status in the GSP Plus scheme. In this regard, European

²⁰ “EU policy on the death penalty”, <https://eeas.europa.eu/archives/delegations/japan/wp-content/uploads/201303-Death-Penalty-fact-sheet-E-web.pdf>

²¹ Ciaran O’reilly, “Spotlight on Pakistan and Philippines in EU trade report”, *euobserver* (30 January 2020) <https://euobserver.com/opinion/147292>

²² “EU-Pakistan 5-year Engagement Plan”, *Europa.eu* (February 2012) http://www.eeas.europa.eu/archives/docs/pakistan/docs/2012_feb_eu_pakistan_5_year_engagement_plan_en.pdf

Union officials had been visiting the Pakistan to assess the human rights situation in the country.²³

The EU Head of Delegation to Pakistan, Lars-Gunnar Wigemark also pointed out in August 2013 that retaining the death penalty would send an overall negative signal to European institutions, for the EU's position on the abolition of the death penalty had no ambiguity.²⁴

The matter of the death penalty in Pakistan continues to be a subject of discussion in the European Parliament, which has been insisting upon the need for Pakistan to review its position on the issue. The view prevails in EU member states and EU institutions that the death penalty does not deter any violent crime, including terrorism.²⁵

GSP+ Compliance Requirements

Undoubtedly, there are economic benefits for Pakistan from the award of GSP+ status, but at the same time it has placed a lot of pressure on Pakistan to make a visible improvement in its human rights situation. Article 9 of the EU's Regulations on GSP Plus clearly states that a country would only be able to draw benefits from the scheme if the monitoring bodies of the relevant international conventions do not call attention to the country's "serious failure" to effectively enforce the conventions.²⁷

Conditions attached to the award and maintenance of GSP+ Status

As already pointed out preferential access to the EU markets under the GSP+ scheme is contingent on effective enforcement of the 27 international conventions by Pakistan and other aspirants. These conventions cover not only human rights, but also civil and political rights, labour rights and protection of the environment. The fact is that while GSP+ was meant as an economic incentive for the economic partners of the EU in the developing world, the potential beneficiaries would have to be fully committed to the implementation of the requisite conventions. To put it more clearly, by accepting the GSP+ status, Pakistan has taken upon itself the obligation to:

²³ AFP, "EU delegation warns Pakistan over death penalty", *Dawn* (27 August 2013) <https://www.dawn.com/news/1038734/eu-delegation-warns-pakistan-over-death-penalty>

²⁴ Mubarak Zeb Khan, "Exports to EU stagnate despite GSP+ status", *Dawn* (14 August 2019) <https://www.dawn.com/news/1499463>

²⁵ Ibid

- 1) To ratify the 27 relevant conventions and also to make certain that these are implemented in letter and spirit,
- 2) to accept without reservation the requirements of periodic reporting imposed by each convention. The monitoring bodies would be regularly keeping track of the implementation on ground, and
- 3) without reservation participate in, and cooperate with, the monitoring procedures of the European Commission.²⁶

Therefore, GSP+ status not only presented an opportunity for Pakistan to improve its economic condition, it also gave incentives to the country to enhance human and labour rights standards. The conditions attached to the GSP+ status demonstrate Pakistan's commitment to stabilize its vulnerable economy and improve its human rights situation.

The EU and other international and national organizations' stand on the restoration of the moratorium on the death penalty in Pakistan

As soon as Pakistan lifted the moratorium on the death penalty after the terrorist attack in Peshawar, economic experts expressed fear that if the government decided to go ahead with the execution of all condemned prisoners, it would have an adverse impact on Pakistan's relations with the EU, particularly its GSP+ status.

However, the death penalty having been abolished by all European Union member states, including the new entrants from the former Soviet bloc, the EU was now more insistent than ever on considering the issue as a human rights violation; therefore, it was feared that the revival of executions in Pakistan would adversely impact on the GSP Plus status in the long run. After the Peshawar tragedy, there was widespread public support in Pakistan for lifting the moratorium on death penalty. However, human rights organizations continued to express reservations on it, citing flaws in Pakistan's legal system.

The deputy director for Asia at Human Rights Watch, Phelim Kine issued a statement castigating the death penalty as an inherently cruel and

²⁶ European Commission, "Joint Staff Working Document", *High Representative Of The Union For Foreign Affairs And Security Policy* (19 January 2018) <https://trade.ec.europa.eu/doclib/html/156544.htm>

irredeemable punishment that does not dissuade terrorists on suicide missions. He urged the Pakistan government to take a powerful moral stand against the tragedy in Peshawar by reaffirming its strong opposition to terrorism and immediately restoring the moratorium on death penalty.²⁷

Other quarters too have been pressuring Pakistan to improve its human rights standards. In December 2014 UN Secretary-General Ban Ki-moon urged the Pakistan Government to stop executions of all convicts and restore the moratorium on the death penalty. Ban's appeal came after Pakistan's decision to lift a six-year moratorium on the use of the death penalty in the wake of the appalling terrorist attack in Peshawar.²⁸ The Pakistan government, issued an emphatic rejoinder to the UN Secretary General's statement, stating that the country was fully aware of its responsibilities under the Human Rights Conventions/Covenants of the United Nations.²⁹

Also, in December 2014, the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, unequivocally condemned Pakistan's decision to lift the moratorium on executions, at a time when there is a worldwide move towards a ban on its use.

Zohra Yusuf, the then chairperson of the Human Rights Commission of Pakistan, was of the view that the re-imposition of the death penalty by the Pakistan government was apparently an emotional rather than a level-headed response to the Peshawar massacre and in the long term would cause harm to Pakistan's image.³⁰

The European Parliament's statement of 15 June 2017 read as follows: "in the light of its previous resolutions on Pakistan; Art.18 of the 1948 Universal Declaration of Human Rights; the revised April 12, 2013 EU Guidelines on the death penalty, the statement of the EU on European and World Day against

²⁷ "Pakistan: Take Death Penalty Off the Table", *Human Rights Watch* (12 March 2015) <https://www.hrw.org/news/2015/03/12/pakistan-take-death-penalty-table>

²⁸ UN chief urges Pakistan to end executions, reinstate death penalty moratorium", *UN News* (24 December 2014) <https://news.un.org/en/story/2014/12/487182-un-chief-urges-pakistan-end-executions-reinstate-death-penalty-moratorium>

²⁹ Ibid

³⁰ "Fighting terrorism and protecting human rights: analysis from FIDH movement", International Federation for Human Rights (20 November 2015) <https://www.fidh.org/en/issues/terrorism-surveillance-and-human-rights/fighting-terrorism-and-protecting-human-rights-analyses-from-fidh>

the Death Penalty of 14 October 2016, the Council's conclusions on Pakistan of July 18, 2016, the Five-Year EU-Pakistan Engagement Plan of March 2012, which mentioned priorities such as good governance and an EU-Pakistan dialogue on human rights, as well as the second EU-Pakistan Strategic Dialogue of March 25 2014, took note of the fact that Pakistan which had earlier placed a moratorium on the death penalty had reinstated it in 2015 after the horrific attack on the Army Public School in Peshawar in December 2014; following which more than 380 prisoners had been executed."³¹

The European Parliament voiced concern over the fact that the country had one of the largest number of convicts on the death row in the world. There were 7,595 prisoners condemned to death; of these around 51-65 were women. The European Parliament also aired its concern over the fact that the judiciary was not abiding by the law prohibiting death sentence for offenders who were under the age of 18 at the time of the committing of the crime. The European Parliament quoted the NGOs which articulated the fear that the practice of sentencing juveniles to death was continuing in Pakistan.

The Parliament was also perturbed about the retention of blasphemy laws in the country and pointed out that this would only increase religious intolerance. It called upon the Pakistan government to annul the provisions in its penal code for blasphemy as a crime, for these contravene the international human rights law. It was pointed out by Members of the European Parliament that these laws were increasingly being used to target the vulnerable minority groups. The EU also appealed to the authorities to ensure that justice is dispensed swiftly in all such cases.

The EU body called upon the government to take a firmer position in condemning and preventing vigilantism towards those accused of blasphemy. There is no doubt that conviction or even allegation of blasphemy can have deadly consequences for the accused person.³²

³¹ "European Parliament resolution of 15 June 2017 on Pakistan, notably the situation of human rights defenders and the death penalty" , *European Parliament* (2017) https://www.europarl.europa.eu/doceo/document/TA-8-2017-0268_EN.html

³² UN chief urges Pakistan to end executions, reinstate death penalty moratorium", *UN News* (24 December 2014)

* The murder of Punjab Governor, Salman Taseer by his own chauffeur. Taseer had called for the release of the Christian woman Aasiya Bibi, a mentally unstable person, accused of blasphemy.

The government was also asked to stop using the rhetoric on blasphemy. In this regard, the EP found disturbing the case of the death sentence awarded to Junaid Hafeez on December 2019, a university lecturer of Bahauddin Zakariya University (BZU) in Multan accused of having committed blasphemy. Allegations of blasphemy are taken very seriously in Pakistan.³³

The Parliament also referred to the organization Reprieve's estimates that up till May 2017 at least 44 prisoners had been executed. The European Parliament stated that while the EU, still remains fully committed to continue its dialogue and engagement with Pakistan under the Five-Year Engagement Plan and the reforms envisioned in it, it is deeply perturbed that in Pakistan in recent decades several cases have been reported of attacks and even the killing of journalists, and human rights activists.

While the European Parliament had several negative comments to offer, it appreciated Pakistan's adoption of a Human Rights Action Plan and its resolve to consolidate its Human Rights institutions. The EP called for translating these measures into concrete action by respecting, protecting and promoting all human rights, and also through strengthening the rule of law. The European Parliament urged the Pakistan Government to abolish capital punishment in the country and to regularly inform the Parliament on the progress made towards this end.³⁴

There can be little doubt that the enforcement of human rights conventions in the country is unsatisfactory and that can be attributed to deep rooted social attitudes, weak and often ineffectual state institutions, and the legal ambiguities that recent steps towards the devolution of power have created. The resumption of executions in the country was strongly criticized by the country's own civil society which declared it as a clear violation of UN conventions.³⁵

³³ "Junaid Hafeez: Academic sentenced to death for blasphemy in Pakistan", *BBC News* (21 December 2019) <https://www.bbc.com/news/world-asia-50878432>

³⁴ "European Parliament resolution on Pakistan, notably the situation of human rights defenders and the death penalty", *European Parliament* (2017) https://www.europarl.europa.eu/doceo/document/B-8-2017-0423_EN.html

³⁵ "UN chief urges Pakistan to end executions, reinstate death penalty moratorium", *UN News* (24 December 2014) <https://news.un.org/en/story/2014/12/487182-un-chief-urges-pakistan-end-executions-reinstate-death-penalty-moratorium>

In March 2020, the European Parliament's International Trade (INTA) committee decided to extend the GSP Plus status for Pakistan until 2022. The decision was based on the third biennial assessment report issued by the Commission on 10 February, 2020. It was then reviewed by the GSP Plus Working Party of the European Council. The Pakistan Commerce Ministry expressed satisfaction over the efforts made by the relevant ministries and departments at the federal and provincial levels in developing policies and setting up institutions to implement the 27 conventions related to GSP Plus.³⁶

Conclusion

The acknowledgment by the international community that the death penalty is a serious human rights issue, along with the development of international human rights law and the economic weight provided to the campaign by the EU, which is spearheading it, explains to a large extent the surge all over the world in the abolition of capital punishment over the past quarter of a century. This does not mean, of course, that all countries have come under the pressure of European institutions. Since the late 1980's the trend towards abolition became widespread, at times aided by local pressure groups, who accepted wholeheartedly the ideological premises of the international human rights regime.

The EU has also been trying to make an impact on other international organizations such as the United Nations. It is noteworthy that the European Union had a special status in UN meetings but legally speaking it could not act like one entity, instead its member states could decide to work together. After the Lisbon Treaty (ratified in 2009) the European Council represents the EU in the UN. Undoubtedly, the EU has made a great contribution to the UN resolutions on moratorium on the death penalty and its close cooperation with the Council of Europe has also furthered the campaign for the abolition of the death penalty. It has gradually been accepted as an international standard. The EU has not been slacked in promoting its norms all over the world. It mostly uses diplomatic and political instruments and incentives to exert pressure on the country and government it seeks to address. Among the tools used can be a promise of accession or association, institutionalizing relations through regional or bilateral partnerships and political dialogues at bilateral level.

³⁶ Mubarak Zeb Khan, "Pakistan wins GSP- Plus extension", *Dawn* (7 March 2020) <https://www.dawn.com/news/1538967>

With the United States, the approach of the EU is different. The US is a close ally of mainstream Europe. The US and Europe also share cultural and political values. Since many decades the United States has been facing international moral pressure to completely scrap capital punishment. Though it cannot be said that the US is absolutely impervious to such influences, these are not very likely to become a leading cause for any potential abolition by American government institutions, in the near future. The United States, in fact, seems resistant to international pressures, including those coming from the European Union, on the matter of the practice of the death penalty.³⁷

The United Arab Emirates (UAE), a Gulf kingdom, also a member of the Gulf Cooperation Council (GCC), is considered one of the world's prolific executioners. Under United Arab Emirates law, the death penalty is applicable for several crimes, including apostasy and blasphemy. Executions are done through either a firing squad, hanging, or stoning. Not only UAE nationals but even foreigners have been executed for crimes punishable by death. In February 2014 Catherine Ashton, the EU's High Representative for Foreign Affairs, welcomed the order by the UAE President earlier in January of the same year for a stay on all executions. This was seen by the EU and human rights institutions as a definitive moratorium on the use of the death penalty in the UAE.³⁸ However, in April 2019, a man who killed his cousin for 400 dirhams was awarded the death sentence and was executed, after the approval of the UAE President.³⁹

Qatar, an oil-rich kingdom and one of the Gulf Cooperation Council (GCC) states retains the death penalty. Capital punishment is applicable primarily for espionage, or other threats against national security. Homosexual liaisons and blasphemy are also considered capital offences, though there have been no recorded sentences of the death penalty for these

³⁷ Jennifer Leigh Thomas, "The Influence of European Union policy on Capital Punishment in the United States judicial system", (Western Kentucky University, 2012) https://digitalcommons.wku.edu/cgi/viewcontent.cgi?article=1377&context=stu_hon_theses

³⁸ Catherine Ashton, "EU welcomes UAE stay on all executions," *NEW EUROPE* (Brussels, February 7, 2014), <https://www.neweurope.eu/article/eu-welmomes-uae-stay-all-executions/>

³⁹ Sebugwaawo, Ismail. "Man in UAE Gets Death Penalty for Killing Cousin over Dh400." *Khaleej Times*. Dubai, April 3, 2019. <https://www.khaleejtimes.com/news/crime-and-courts/man-in-uae-gets-death-penalty-for-killing-cousin-over-dh400>

charges. Only rarely have executions taken place in the country; the last execution was carried out in May 2020 for murder. In March 2018, the European External Action Service (EEAS) and the Foreign Ministry of Qatar signed a Cooperation Arrangement. This Cooperation Arrangement provides for an enhanced political dialogue and envisages strengthened cooperation in areas of mutual interest, in particular private sector development and research and innovation. These are key areas for Qatar's efforts to diversify and its transformation agenda, which is contained in the Qatar National Vision 2030.⁴⁰ The United Nations specifically called upon Qatar to reform its policy on domestic workers rights and abolish capital punishment.⁴¹

The death penalty has been the subject of controversy for a long time. The South Asian countries are at the centre of this controversy, for they have adopted an ambivalent approach towards the death penalty.

India's economic upturn in recent years is no doubt an important factor explaining the European Union's growing interest in the South Asian country. But besides economic factors, international political developments also increased India's importance in the calculations of the EU. Amongst these was the growing scepticism with regard to China as a reliable economic partner and a dependable international player. The exponential rise of China as an exporter of a variety of goods is a disturbing development for the EU, which is foremost a trading power.⁴²

Despite international pressures and campaigning by its own human rights groups, India retains the death penalty. On March 2020, the European Union condemned the hanging of four convicts of the Delhi gang rape case. The EU called it a "cruel and inhumane punishment" which was ineffective as a deterrent against violent crime.⁴³

⁴⁰ "Qatar and the EU." *EEAS*. European Union External Action, September 23, 2020. Last modified September 23, 2020. Accessed November 19, 2020. https://eeas.europa.eu/diplomatic-network/qatar/2309/qatar-and-eu_en.

⁴¹ Bibbo, Barbara. Episode. *UN Calls on Qatar to Reform Workers Rights, Abolish Death Penalty*. Doha, Qatar: Aljazeera, May 16, 2019. <https://www.aljazeera.com/news/2019/5/16/un-calls-on-qatar-to-reform-workers-rights-abolish-death-penalty>

⁴² Dockx, Pieter, and Manuel Herrera. *What Drives the EU Towards India?* 5566, 2019. http://www.ipcs.org/comm_select.php?articleNo=5566

⁴³ Basu, Nayanima, ed. "'Cruel and Inhumane' — European Union Condemns Hanging of 16 December Gang Rape Convicts." *The Print*. India, March 20, 2020.

Pakistan is eager to continue enjoying the facilities offered by the European Union's Generalized Scheme of Preferences Plus, but is hesitant about implementing the EU's recommendation for a ban on the death penalty. The event that pushed Pakistan to lift the moratorium on executions was the carnage in the Army Public School in Peshawar in December 2014. Such a horrific act of terrorism was bound to evoke a tough response. In 2015 alone by executing 333 convicts, Pakistan earned the dubious distinction of joining the ranks of those countries which carry out the most executions. The courts have also continued to award the death penalty. The courts pronounced death sentences on 225 accused in 2014 and 411 in 2015.⁴⁴ Since the Peshawar attack, those convicted of terrorism have been executed, but the definition of terrorism has been broadened to include numerous other offences under the Anti-Terrorism Ordinance. As Pakistan lifted the moratorium on the death penalty after the Peshawar terror attack, economic experts expressed fears that the move would jeopardize the GSP Plus status awarded to the country by the European Union, particularly, if the government decided upon executing all condemned prisoners. The government got widespread public support on lifting the moratorium on executions after the Peshawar tragedy, though, human rights organizations were unhappy over the move.

In 2019, the status of Pakistan as regards the Generalized System of Preferences (GSP+) appeared to be in jeopardy, owing to a shift in the EU's external economic policies and the restrictions that Islamabad imposed on international non-governmental organizations (INGOs). Thus, as regards GSP plus, circumstances were not favourable for Pakistan. Another hurdle for Pakistan is that the EU in recent years has begun to shift its focus towards Central Asia. It has now begun to concentrate on low- and middle-income countries for granting concessions. However, after much lobbying by the Pakistan government and intensive negotiations, the European Commission extended the GSP Plus status till 2020. In March 2020 it was extended for two more years, i.e., until 2022. This means that Pakistan will for the time

<https://theprint.in/india/cruel-and-inhumane-european-union-condemns-hanging-of-16-december-gang-rape-convicts/384880/>

⁴⁴ Ikram Junaidi, 'Countries without the death penalty have lower crime rates', *Dawn* (11 October 2016) <https://www.dawn.com/news/1289464/countries-without-the-death-penalty-have-lower-crime-rates>

being continue to enjoy preferences for its exports to the EU under the GSP plus scheme.⁴⁵

However, Pakistan also has to contend with the threat of terrorism, a fall out of the Afghan war, which is very real and which has plagued Pakistan for many decades. Thus, the country has to tread very carefully, in order to deal effectually with its economic as well as security challenges, and at the same time to improve its image in the world.

It is noteworthy that while both Pakistan and India enjoy the economic benefits offered by the European Union, Pakistan faces more pressure from the EU because countries benefitting from GSP Plus status are bound to implement 27 international conventions related to human rights, labour rights, protection of the environment and good governance. This clause exerts tremendous moral pressure on Pakistan on the matter of the death penalty.

Keeping in view all these aspects, of the issue of death penalty and its implementation, the author's conclusion is that Pakistan needs GSP+ more than ever. The benefits of GSP+ status can be capitalized if the status is retained. In order to avoid any untoward situation, the government needs to take this issue seriously and reform the country's legislative and institutional setup accordingly.

⁴⁵ Mehtab Haider, "EU extends GSP Plus status to Pakistan till 2022' ", *The News International* (7 March 2020) <https://www.thenews.com.pk/print/625091-eu-extends-gsp-plus-status-to-pakistan-till-2022>