**Mental Health and the Death Sentence**

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The recent decision of Pakistan’s Supreme Court provided that the execution cannot be carried out, if the condemned prisoner is suffering from mental illness. In reality, all condemned prisoners are vulnerable, however, amongst those the condemned prisoners with mental illness are the most helpless and vulnerable. It is to bear in mind that not all mentally unfit condemned prisoners are exempted from the application of the death penalty in the wake of recent decision. Those who have been declared mentally unfit by the medical board consisting of medical health professionals after a thorough examination& evaluationthat the condemned prisoner does not understand and appreciate the reason and rationale behind the death sentence awarded to him/her. “[I]t is clarified that not every mental illness shall automatically qualify for an exemption from carrying out the death sentence,” reads the verdict.

After Iran, and Saudi Arabia, Pakistan is the most prolific country-where the application of the death penalty is common. The death penalty could be awarded in Pakistan in 33 offences having blasphemy under section 295 C of Penal Code of 1860. After the reinstatement of the death penalty in the year 2014 until 2019632 people had been sent to gallows, which was 27.3 percent of all death sentences worldwide that year, according to Amnesty’s data.After recent decision of the apex court of Pakistan, the question that arises is: what about those prisoners who have been languishing behind prisons with mental health issue all across Pakistan, and yet to be sentenced? Legal Awareness Watch Pakistannon-profitable NGO approximately provides that some 188 people have been accused and convicted of blasphemy related offences falling with the ambit of section 295 C & B of Penal Code of Pakistan 1860. For instance, Mushtaq(pseudonym) was arrested from Lahore from the area of lower mall on charges of blasphemy since his arrest he has been standing trial despite his mental health condition.Not a single lawyer from Lahore wished to represent him in the court of law to establish his innocence. As per some Mushtaq was a beggar/homeless person residing in the suburbs of Tombof DattaDarbar of Lahore. Moreover, another prisoner has been standing a jail trial since April, 2019 who has mental health issues. He has been kept in one of the prisons of Punjab province without medical facilities since 2019, and yet to be dispatched to District Hospital (DHQ) where he is detained at for determination of his medical health condition.

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The point that I wanted to make is mental health checkup of all prisoners ought to be made mandatory at the time of arrest of a person regardless of nature of offence committed from the hands of the arrested person. The decision of the apex court of Pakistan undoubtedly an excellent decision and it granted to liberty to two condemned prisoners after more than fifteen yearswho had been suffering from mental illness. It took them many years to establish their mental health illness in the court of law. It would have been better had their mental health condition evaluated during the trial before the commencement of prosecution evidence or before conclusion of the trial by virtue of section 464 read along with section 465 of the Criminal Code of Pakistan 1898. Apart from medical health condition authorities across Pakistan particularly police must be directed and trained on age determination mechanism of an arrested person in lines with Juvenile Justice System Act 2018 if arrested person appeared to be a child. In recent past, one Ansar Iqbal was sent to gallows in spite of juvenility at the time of occurrence for which he was arrested. Furthermore, Muhammad Iqbal alias Balihad spent some 18 years on the death row despite being a juvenile at the time of an offence that he never committed. Baliwas released from the prison last year in July 2020 after tireless efforts ofLegal Awareness Watch Pakistan.Those who had been released from prison in the wake of recent decision of the apex court of Pakistan many more such have been languishing in prisons and those included people charged of blasphemy under section 295 C of Penal Code. The courts, and other pillars of criminal justice system of Pakistan must develop a mechanism on if a person is charged of blasphemy during theirphysical remand under section 167 of Criminal Code 1898 be sent for psychiatric examination to District Medical Board. The medical/psychiatric examination shall not be made at the discretion of the arresting authority/police, it should become a strict rule that to be followed and answered before sending an arrested person to judicial lockup. The decision of the apex court might be good for those who had been released in the wake of this decision. However, who have been behind prisons despite having mental health issues should also be considered otherwise some amongst those would die in the hope of getting release from prison otherssend to gallows.

The writer is an advocate, based in Lahore