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Recognition of Islamic Jurisprudence to the People's Republic of China's Model of Awarding Capital Punishment to the Convicts of Financial Corruption

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Abstract: *All state governments make their efforts, at their levels, to curb the hazard of corruption. Financial corruption is a menace to every society. Criminal Law of the People's Republic of China awards the punishment of death to the culprits of heinous financial corruption. In Pakistan, the Federal Investigation Agency (FIA), National Accountability Bureau (NAB), and Federal Board of Revenue (FBR) are making their best efforts to eradicate this evil. Islamic jurisprudence provides only limited offenses where the death penalty is settled as punishment. Whether Islam can adopt this punishment, is a question, not considered by early Muslim jurists in their academic works. The Qur'anic conception of punishments is broad enough to accommodate the needed adjustments, which this article attempts to do. This research helps facilitate legislature to handle the question of whether or not it can award the death penalty to financial corrupts in light of Islamic injunctions.*

Key Words: Corruption, China, Financial, Islam, Pakistan

Introduction

Corruption has various aspects. It is a phenomenon wherein an official abuses his powers and situation to procure illegal benefits for himself or other persons, which includes bribery, extortion, and misuse of discretionary authority (Graycar, 2015). It also encompasses the phenomenon wherein an official or fiduciary person wrongfully and unlawfully utilizes his position, to secure benefits for himself or for another person, which is contrary to his duty and the rights of others (US v. Johnson, 1899). In Pakistan, the ex-ruling elite is facing accountability for alleged corruption (Arshid, 2018). Eradication of corruption has been a hot topic in media including social, electronic, and print. Most of the people in Pakistan are supporters of harsher punishments than existing punishments. By applying the theoretical framework of the Chinese model of capital punishment for convicts of financial corruption, the research at hand examined its compatibility with Islamic injunctions and its application in the context of Pakistan. This paper helps legislators to look out of the box, to curb the dilemma of corruption and its associated challenges in Pakistan.

For conducting the research the following two questions have designed: whether Chinese model of punishment for corruption is compatible with Islamic teachings? Whether Chinese model of punishment for corruption can be applied in Pakistan? To conduct this research, mixed qualitative and quantitative research methods have been used. Considering the scope of the topic, a single survey question has been put in place regarding the death penalty for financial corruption wherein 200 people from different walks of life have been taken as a population for conducting the research. The research at hand also critically examined and draw a comparative analysis of the existing literature in China and Pakistan with the help of primary and secondary sources, including constitutional provisions, penal and other statutory laws, Islamic injunctions, judicial precedents, and published research work.

The Ruling Party of the Punjab Province, *Pakistan Tehrik-e-Insaf* (PTI) moved a resolution in the Provincial Assembly of Punjab on September 23, 2018, through its legislator namely Muhammad *Nadeem Qurashi*, MPA (Multan-V, PP-216), and demanded the

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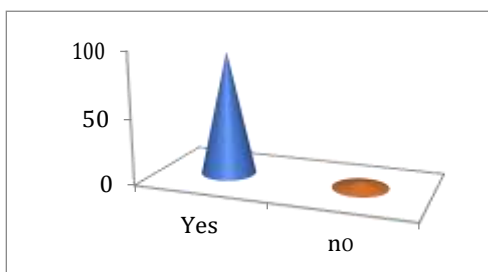
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death penalty for financial corruption (Yousaf, 2018). As per the spirit of the constitution, the legislature is forborene from enacting laws contrary to Islamic injunctions. (Art. 227 of the Constitution of Pakistan, 1973). The nature of the bill demands suitable *Shariah* responses, whether or not the proposed bill complies with Islamic injunctions. For its operational framework, the research paper has been categorized into the following segments: the first segment introduced financial corruption, presented a survey report, elaborated on the objectives and scope of the topic, provided research questions, and explained the research methodology being used. The second segment reviewed relevant literature about China's model of punishment for culprits of corruption in light of its penal and other statutory laws and provided a threshold of the graft for awarding the death penalty. The third segment examined anti-corruption laws in Pakistan in light of penal laws and the National Accountability Bureau Ordinance, 1999. The fourth segment examined types of punishments in Islam by explicating relevant *Haddood*, *Qisas*, and *Tazir* cases. The fifth segment of the research paper examined Islam teachings regarding corruption. The sixth segment analyzed its legislative basis in Pakistan. The seventh segment, last but not least, concluded the research paper and contributed recommendations, which help guide the legislature in policy-making and legislation in curbing the menace of financial corruption.

Survey Analysis

To narrow down the scope of the research, a single survey question was prepared, i.e., do you demand death punishment for financially corrupt people in the service of Pakistan? The population of the survey was 200 people belonging to different walks of life, including lawyers, government servants, politicians, and people from civil society. As per the survey report, 95% of the population answered in the affirmative and the remaining 05% answered in the negative, which has been reflected in the following Chart:



Graph

The combined effect of the outcome of the survey and the resolution tabled by the government of Punjab in the provincial assembly is that imposition of the death penalty for corruption is the demand of the day. To check the compatibility of the proposed punishment with the Islamic injunctions, a critical appreciation of the Islamic laws on corruption has been presented. The following segment examined a comparative analysis of China and Pakistan's legal framework for penalizing culprits of financial corruption.

China's Model of Punishment for Corruption

Chapter VIII, which is about Graft and Bribery, of Criminal Law of the People's Republic of China provides for punishment for the convicts of corruption. Articles 382 and 383 deal with the basic structure of law regarding the execution of corrupt people. These provisions provide various punishments, including the death penalty for corrupt people. Article 382 defines the crime of graft as whosoever takes undue advantage of his official capacity to misappropriate, steal, or use other illegal means for acquiring state properties. It also includes persons entrusted by state organs, state companies, enterprises, and mass organizations for the administration of state properties, but adversely using their authority for acquiring state properties. Likewise, the person who collaborated in committing an offense of graft is regarded to have committed a joint crime. Article 383 deals with punishments for violation of the aforementioned provision and stipulates the following punishments for violation of Article 382:

First, whosoever engaged in embezzlement amounting to more than 100,000 Yuan shall be sentenced to life imprisonment or for a term not less than 10 years. In exceptional cases, the culprit may be sentenced to death and his property shall be confiscated. Second, whosoever is found guilty of graft amounting to 50,000 - 100,000 Yuan, shall be sentenced to more than 5 years of imprisonment and his properties may be confiscated. In case of the heinous nature of the crime, the perpetrator shall be imprisoned for life along with confiscation of properties. Third, whosoever commits an offense of graft amounting to 5,000 - 50,000 Yuan shall be liable to a sentence of 1-7 years. Nevertheless, in case of heinous crimes, the perpetrator could be sentenced to 7-10 years of fixed-term imprisonment. Third, whosoever is found guilty of graft amounting to 1,000 - 10,000 Yuan shall be awarded reduced punishment or he may be exempted from punishment by expressing repentance and returning the obtained money, but shall face administrative action. Fourth, whosoever is found guilty of graft amounting to less than 5,000

Yuan, with the crime being heinous shall be sentenced to less than 2 years imprisonment. Otherwise, the perpetrator shall face administrative action only. Fifth explicates that whosoever repeatedly commits a crime of graft and goes unpunished, shall be punished based on the collective amount of money he has embezzled (Article 383 of the Criminal Law of 1997).

Threshold of the Graft for Awarding Death Penalty in China

As evident from Article 383(), the court may award any punishment exceeding 10 years, life imprisonment, confiscation of property, or death sentence. Earlier, no threshold was provided to define the scope of a "serious case". In Wang Shouxin's case, the convict was executed for the corruption of 536,000 Yuan. Wang Shouxin was a low-level cadre of the Chinese Communist Party, executed in 1980 for embezzling state funds (Foster, 2009). In Zheng Xiaoyu's case, the convict was executed on July 10, 2007 for taking estimated 6.49 Million Yuan as bribe money for personally approving unproven and unsafe medicines that resulted in the death of hundreds of people. But now the apex Court of China has laid down a door-sill for awarding the death penalty in graft cases, which involves an extraordinarily huge value of three million Yuan or more.

Anti-Corruption Laws in Pakistan

Corruption is widespread evil in Pakistan. Pakistan has been ranked as the 117th corrupt country out of 180 countries (Corruption Perceptions Index, 2018). To prevent corrupt practices of public servants, the general law dealing with the subject is Chapter IX of the Pakistan Penal Code, 1860. However, it provides maximum imprisonment of three years. In Pakistan, the specific objective-oriented law on the subject above is the Prevention of Corruption Act, of 1947. But the maximum punishment available under this law is imprisonment for seven years. Another law dealing with corruption is the NAB Ordinance, of 1999, which called for the establishment of the NAB and authorized it to launch investigations, conduct inquiries, and issue arrest warrants against individuals suspected of financial mismanagement. However, it provides maximum imprisonment of fourteen years. Unlike China, none of the laws dealing with financial corruption provides the punishment of the death penalty.

Kinds of Punishments in Islam

The death penalty is a capital punishment that can be

awarded only when it is necessary (Schabas, 2000) and permitted by Islamic law (Al-Quran, 17:33). The question, is whether Islam allows capital punishment for the offense of financial corruption, can be answered by understanding the scheme of punishments as provided by Islam, which has been examined in the following segment: Hadood Cases, It deals with the offenses for which Punishments are fixed by either the Holy Quran or the Sunnah of the Prophet Hazrat Muhammad (Peace Be Upon Him). In such cases, judges have no discretion (Postawko, 2002). Four out of seven Hadood offenses are punishable by death: adultery, apostasy, armed robbery, and rebellion. Qisas Cases applies to the crimes of murder or bodily injury and it means retaliation by the state on behalf of either victim, in cases of bodily injuries, or *walis*, legal heirs, in cases of intentional murder (Postawko, 2002). The Holy Quran provides the very basis of Qisas crime in Surah Al-Maida, as "We ordained therein for them: "Life for life, eye for an eye, Nose for nose, ear for ear, Tooth for tooth, and wounds equal for equal." But if anyone remits the retaliation by way of charity, it is an act of atonement for himself; and if any fail to judge by (the light of) what Allah Hath revealed, they are (No better than) wrongdoers (Al-Quran, 05: 45)."

It is obvious from the supra verse of the Holy Quran that in revenge for intentional murder, the murderer can be assassinated. Tazir Cases, these cases consist of discretionary punishments imposed for offenses not covered by Hadood or Qisas. In the following four situations, Tazir punishment may be awarded: firstly, offenses where the technical requirement for Hadood or Qisas could not be complied with such as attempted adultery; secondly, offenses which come under Hadood cases, but contain an element of doubt; thirdly, acts against public welfare or which have been condemned by the Holy Quran or Sunnah, but not enlisted in Hadood or Qisas cases such as false testimony; fourthly, acts which are violative of social norms such as obscenity (Lippmann, 2017).

Islam on Corruption

Corruption is one of the worst sins in Islam. Allah, The Almighty, has condemned it in the Holy Quran as:

"And do not consume one another's wealth unjustly or send it [in bribery] to the rulers so that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful] (Al-Quran, 2: 188)."

The Holy Prophet (PBUH) condemned bribery by stating as, "لعن رسول الله ﷺ المرء : والمرء = "Be curse of

"And those who have responded to their lord and established prayer and whose affair is [determined by] consultation among themselves, and from what We have provided them, they spend." (Al-Quran, 42:38).

From the above verse, it has become evident that the disputes among the citizens would be decided by the persons having authority through their mutual consultation. The supra-noted concept has been adopted in recent times, by the establishment of *Majlis Shura*/ Parliaments. So in the current scenario, National Assemblies and Senates have the power to define the scopes of legal terms, in the light of the Holy verses of the Holy Quran and the teaching of the Holy Prophet (PBUH) and in case nothing is found in the Holy Quran and Sunnah, then they would resolve the problem with their mutual consultations, in form of legislations.

The Holy Prophet (PBUH) once appointed *Hazrat Maaz Bin Jabil* as a governor of Yemen and asked him how he would decide the disputes coming before him. He answered that he would decide in the light of the Holy Quran. Then the Holy Prophet (PBUH) inquired if he could not find any solution out of the Holy Quran then how would he decide the disputes? then *Hazrat Maaz Bin Jabil* submitted that he would find out the solution from the teachings of Allah's Messenger; Then Holy Prophet (PBUH) further inquired that if he could not find out any answer from the teachings of the prophet (PBUH) then how would he decide the disputes? He said that in such eventualities, he would decide the disputes by his wisdom. The Holy Prophet (PBUH) praised his answers (Al-Qaziya, Hadith No.3592). So, the Parliament of Pakistan has the legal authority to legislate any criminal activity as *a fasad fil-ard*, but after due deliberations and consultations with other members of parliament.

Legislative Basis in Pakistan

The Constitution of Pakistan declares Islam is the state religion of Pakistan (Art. 2 of the Constitution of Pakistan, 1973). Objectives Resolution of Pakistan 1949, which is a substantive part of the Constitution (Art. 2-A of the Constitution of Pakistan, 1973). The preamble to the Constitution declares the sovereignty of Allah and explicates how the will of the people is being

exercised by their representatives (Preamble to the Constitution). Likewise, Article 227 of the Constitution articulates compliance of not only existing laws but also prospective laws with the Islamic injunctions (Art. 227 of the Constitution of Pakistan, 1973). Considering the abovementioned discussion, it is obvious that the legal system of Pakistan is based on Islamic laws as per the spirit of the Constitution.

Conclusion and Recommendations

To conclude, the research paper at hand explored the Chinese model of punishment and sought to justify whether or not the legal framework of the Chinese model of punishment for corruption is compatible with Islamic teachings?, whether the legal system of Pakistan is based on Islamic laws? And whether the Chinese model of punishment for corruption can be applied in Pakistan. In light of the above discussion, answers to all these questions are affirmative. A direct recourse to the broader Qur'anic conception of *Fasad fil-ard* has been instrumental in providing relevant responses to the aforementioned propositions. Considering the necessity of the topic, further research to explore the *Shariah* resources, especially secondary sources of Islamic legislation is inevitably required. Even though the Holy Qur'an is the most authoritative source in the given context, the Sunnah of the Prophet (PBUH) is also instructive. With the current research, it is established that the People's Republic of China awards proportionate punishment to the quantum of corruption. It is further founded that Islam not only permits to award of punishment for financial corruption but also authorizes *Majlis-e-Shura* to declare offenses of corruption as *Fasad fil-ard*. Thus, it is implied that *Majlis-e-Shura* is authorized to fix any punishment for financial corruption, including the death penalty. *Majlis Shura* of Pakistan runs its legislative business based on the Islamic principles of legislation. Therefore, it's recommended that if the legislator deems it appropriate to declare the death penalty for financial corruption then the fixation of proportionate punishment to the quantum of corruption in line with the Chinese model of punishment, is the most suitable legislative model.

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