

Pakistan's Predicament: Determining the Country's Approach Toward Individuals with Mental Illness on Death Row

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I. INTRODUCTION

After former Pakistani President Asif Ali Zardari ordered an indefinite moratorium on the death penalty throughout the country in 2008, the moratorium was partially lifted in 2014 following an attack on a Peshawar school by the Taliban with the objective to execute individuals convicted of terroristic acts.¹ The moratorium came to a complete end in 2015, giving discretion once again to the courts to award the death sentence in all capital cases where the defendant has exhausted

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1. *Pakistan in Mourning as Parents Bury Children After Taliban Attack*, CBC NEWS (Dec. 17, 2014), <http://www.cbc.ca/news/world/pakistan-in-mourning-as-parents-bury-children-after-taliban-attack-1.2875860>; Shahzad Raza, *No Executions in Pakistan Until President Zardari Retires: Aide*, DAWN (July 8, 2013), <https://www.dawn.com/news/1023701>.

all of his appeal opportunities.² With the moratorium lifted, many Pakistanis suffering from mental illnesses have become victims of a lack of procedural safeguards within the criminal justice system.³

The United Nations Human Rights Committee (UNHRC) voiced its concerns over a recent decision by the Supreme Court of Pakistan, where the Court affirmed the lower court's decision to impose the death penalty on a man suffering from schizophrenia after finding him guilty of murdering a religious scholar.⁴ By following through with the execution of an individual with a mental illness, the Court would not only set a dangerous precedent within the country but would also violate international law prohibiting the execution of those with psychosocial or other mental disabilities.⁵ Additionally, there are serious questions as to whether Pakistan, if it follows through with the execution, would violate its own domestic laws.⁶ In issuing a single decision, the Supreme Court of Pakistan has put itself in a position where, if it follows through with the execution of Imdad Ali, it will set the tone for how the Pakistani criminal justice system will treat individuals with mental illnesses.⁷ Because of the gravity of the Court's decision, this Comment will focus primarily on the circumstances surrounding the treatment of Ali, as the outcome of his case will determine whether Pakistan will conform with or deviate from international human rights standards pertaining to individuals on death row who are suffering from mental illness.⁸

2. Shuan Sim, *Pakistan Ends Death Penalty Moratorium*, INT'L BUS. TIMES (Mar. 10, 2015), <http://www.ibtimes.com/pakistan-ends-death-penalty-moratorium-1841946>. In 2015, the most executions took place in China, Iran, and Pakistan, respectively. See *Death Penalty 2015: Facts and Figures*, AMNESTY INT'L (Apr. 6, 2016), <https://www.amnesty.org/en/latest/news/2016/04/death-penalty-2015-facts-and-figures/>. Although China does not publish the amount of people they execute, the number is believed to be thousands ahead of Iran and Pakistan. See *id.*

3. JUSTICE PROJECT PAK., A "MOST SERIOUS CRIME:" PAKISTAN'S UNLAWFUL USE OF THE DEATH PENALTY 31 (2016), https://www.law.yale.edu/system/files/area/center/schell/2016_09_23_pub_dp_report.pdf. Brad Adams, Asia Director of Human Rights Watch, notes that "ever since ending its unofficial moratorium on the death penalty in late 2014, the Pakistani government has been widening the circle of those put to death. The government should act now and explicitly reject the odious practice of executing people with psychosocial disabilities." See *Pakistan: Don't Execute Man with Mental Disability*, HUM. RTS. WATCH (Sept. 19, 2016), <https://www.hrw.org/news/2016/09/19/pakistan-dont-execute-man-mental-disability>.

4. Mst. Safia Bano v. Home Department, Government of Punjab, (2016) 37 PLD (SC) ¶ 13 (Pak.); *Pakistan: Don't Execute Man with Mental Disability*, *supra* note 3.

5. *Pakistan: Don't Execute Man with Mental Disability*, *supra* note 3.

6. *Pakistan Heads for Breach of International Law After Supreme Court Declines To Intervene in Hanging of Mentally Ill Prisoner*, REPRIEVE (Sept. 27, 2016), <http://www.reprive.org.uk/press/pakistan-heads-for-breach-of-international-law-after-supreme-court-declines-to-intervene-in-hanging-of-mentally-ill-prisoner/>.

7. See *Bano*, (2016) PLD ¶¶ 10, 13.

8. In an almost identical set of facts, the Lahore High Court on January 17, 2017 stayed the execution of a mentally ill man, Khizar Hayat, pending the outcome of Ali's case and how the

Imdad Ali started showing symptoms of mental illness as far back as 1998, but due to his family's poor financial condition, he was unable to gain access to any type of medical treatment.⁹ Ali, from Burewala District of Southern Punjab, Pakistan, was finally able to see a mental health specialist in 2001, when the doctor referred him to a mental health facility for psychosocial disabilities. A lack of available financial resources continued to prevent him from acting on the doctor's recommendation.¹⁰ Shortly thereafter, Ali began to plot the murder of his mentor and spiritual leader, accusing him of obstructing his spiritual knowledge.¹¹ Eye witnesses described Ali as acting irrational, with "the nature of his rambling rant . . . consistent with symptoms of delusions of being persecuted, irrational anger and violence that are associated with paranoid schizophrenia."¹² Ali eventually shot and killed his mentor, and he was promptly arrested by Burewala police.¹³ Ali's wife, Safia Bano, raised a plea of insanity to prevent Ali from being given the death penalty, but the Court of Additional Sessions Judge rejected her plea due to a lack of sufficient medical documents and sentenced him to death in July 2002.¹⁴

Ali's mental illness was exacerbated due to poor conditions supplemented with gross overcrowding during his early years of incarceration.¹⁵ In 2004, a medical specialist diagnosed Ali with psychosis, yet the Lahore High Court dismissed his appeal to prevent his

Pakistani criminal justice system will ultimately handle mentally ill patients on death row. Hayat, who was diagnosed with psychosocial disabilities, was sentenced to death in 2003 as a result of killing a fellow police officer. *See Pakistan Court Stays Khizar Hayat's Execution*, AL JAZEERA (Jan. 12, 2017), <http://www.aljazeera.com/news/2017/01/pakistan-court-stays-khizar-hayat-execution-170112150841304.html>.

9. *Imdad Ali*, REPRIEVE, <http://www.reprive.org.uk/case-study/imdad-ali/> (last visited Mar. 10, 2017).

10. *UN Rights Experts Urge Pakistan Authorities To Halt Execution of Man with Disability*, U.N. NEWS CTR. (Sept. 27, 2016), <http://www.un.org/apps/news/story.asp?NewsID=55142#.WdFExUyZNE7>.

11. *The Imdad Ali Case*, JUST. PROJECT PAK. (Nov. 16, 2016), <https://jpp torturewatch.wordpress.com/2016/11/16/the-imdad-ali-case/> [hereinafter JPP, *Imdad Ali*].

12. *Id.*

13. Clive Stafford Smith, *On Death Row in Pakistan, a Schizophrenic Prisoner Waits for the Hangman's Noose*, INT'L BUS. TIMES (Sept. 23, 2016), <http://www.ibtimes.co.uk/death-row-pakistan-schizophrenic-prisoner-waits-hangmans-noose-1582998>.

14. *Mst. Safia Bano v. Home Department, Government of Punjab*, (2016) 37 PLD (SC) ¶ 2 (Pak.); JPP, *Imdad Ali*, *supra* note 11; *see also* Omar Sial & Sahar Iqbal, *A Legal Research Guide to Pakistan*, GLOBALEX (Nov. 2005), <http://www.nyulawglobal.org/globalex/Pakistan.html> (noting that in Pakistan, cases punishable by death are tried by Session Judges, which have courts in every district that tries criminal cases, whereas lesser offenses are tried by Magistrates).

15. *Imdad Ali*, *supra* note 9.

execution on the basis of his deteriorating mental condition in 2008.¹⁶ In November 2012, after the superintendent of District Jail Vahari requested a second medical report, the Head of the Department of Psychiatry at Nishter Hospital, Dr. Naeemullah Leghari, diagnosed Ali with paranoid schizophrenia, specifically citing Ali's "incoherent speech" and "bizarre paranoid delusions."¹⁷ The Supreme Court once again upheld Ali's sentence on his October 19, 2015, appeal, and the President of the Islamic Republic of Pakistan rejected his Mercy Petition on November 17, 2015.¹⁸

When the Court issued black warrants¹⁹ against Ali for his execution on July 26, 2016, Bano filed a Writ Petition before the Lahore High Court, Multan Bench.²⁰ However, the High Court dismissed Bano's appeal on August 23, 2016, noting that "filing of application by [Bano] raising [the] same plea apparently appears to be an effort on her part to prolong the execution."²¹ In the Supreme Court of Pakistan's famous judgment dismissing Bano's most recent Writ Petition, the Court concluded that "schizophrenia is not a permanent mental disorder" and that "rules relating to mental sickness are not subjugative to delay the execution of death sentence."²²

The international community's mounting pressure over Pakistan's treatment of Ali has caused the Supreme Court to stay Ali's black warrant, pending a further medical examination that will be conducted by a group of three psychiatrists selected by the Advocate General of Punjab.²³ Thus, not only will the outcome of Ali set a legal precedent on how Pakistan treats those with mental disabilities within the criminal justice system, it will also have a rippling effect on how citizens with mental illness will ultimately be treated outside of the country's legal system.

16. *Bano*, (2016) PLD ¶ 2; *Pakistan: Don't Execute Man with Mental Disability*, *supra* note 3.

17. *Pakistan: Don't Execute Man with Mental Disability*, *supra* note 3; *Imdad Ali*, *supra* note 9. Leghari describes paranoid schizophrenia as a "chronic and disabling psychiatric illness. This illness significantly impairs the person's rational thinking and decision making capabilities." Leghari further observed that Ali engaged in reoccurring self-talk, gesturing, posturing, odd ideas and beliefs, bizarre ideations and lack of concern for his death sentence." *See Pakistan: Don't Execute Man with Mental Disability*, *supra* note 3.

18. *Bano*, (2016) PLD ¶ 2.

19. Black warrants are the same as an execution warrant: it is a writ by the court authorizing the execution of an individual.

20. *Bano*, (2016) PLD ¶ 2.

21. *Id.*

22. *Id.* ¶¶ 11, 13.

23. Order, *Mst. Safia Bano w/o Imdad Ali v. Home Department, Government of Punjab*, (2016) PLD (SC) 1, 2 (Pak.).

II. INTERNATIONAL APPROACH TOWARDS MENTAL ILLNESS

The United Nations (U.N.) has taken several measures in order to ensure that people with disabilities are guaranteed the same rights and privileges that people without disabilities enjoy.²⁴ Furthermore, the U.N. has established a long history of treaties and resolutions that ensure that certain statutory safeguards are implemented in order to protect the mentally ill population when they are faced with the prospect of execution. The U.N. admitted Pakistan as a Member State on September 30, 1947.²⁵

A. *Convention on the Rights of Persons with Disabilities*

The U.N. Member States adopted The Convention on the Rights of Persons with Disabilities (CRPD) on December 13, 2006.²⁶ Pakistan became a signatory to the CRPD on September 25, 2008, and later ratified it on July 5, 2011, effectively pledging to adhere to the provisions contained in the CRPD.²⁷ The CRPD was adopted with the purpose of “promot[ing], protect[ing] and ensur[ing] the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their *inherent dignity*.”²⁸ The treaty protects people with “long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others” as part of the population that the CRPD is designed to protect.²⁹ Furthermore, the CRPD recognizes in its preamble that “discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person.”³⁰ In article 10, the CRPD guarantees that every person, including those with disabilities, has the inherent right to life, and the country shall take all available measures to ensure that those with disabilities enjoy this privilege on an

24 See, e.g., Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3 [hereinafter CRPD]; International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

25 See *United Nations Member States*, UNITED NATIONS [U.N.], <https://www.un.org/press/en/2006/org1469.doc.htm> (last visited Mar. 20, 2017).

26 See *Convention on the Rights of Persons with Disabilities*, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&lang=en (last visited Aug. 17, 2017).

27 *Id.* (entered into force Sept. 25, 2008, and ratified by Pakistan Jul. 5, 2011).

28 CRPD, *supra* note 24, art. 1 (emphasis added).

29 *Id.*

30 *Id.* pmb1.

equal basis.³¹ Finally, the CRPD states that “in order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice.”³² By virtue of Pakistan being a signatory to the CRPD, the country is expected to adhere to all of its provisions, including the inherent right to life and the implementation of effective access to justice through proper training of members working in the judicial framework.³³

B. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) is monitored by the UNHRC and recognizes “the inherent dignity and the equal and inalienable rights” of all people, with these rights “deriv[ing] from the inherent dignity of the human person.”³⁴ Pakistan signed the ICCPR on April 17, 2008, and ratified it on June 23, 2010.³⁵

Among these promulgated inherent rights is article 7, which gives all persons the right to be free from “torture or [from] cruel, inhuman or degrading treatment or punishment.”³⁶ Although the ICCPR does not outlaw capital punishment outright, the UNHRC has, nevertheless, found that issuing a warrant for the execution of a person with a severe mental illness constitutes cruel, inhuman, or degrading punishment.³⁷ In *R.S. v. Trinidad and Tobago*, the trial court convicted the defendant of murder and sentenced him to death.³⁸ After reading him his black warrant, which was to occur five days after the fact, the court granted a last minute stay in order to conduct a psychiatric examination.³⁹ After the examination,

31. *Id.* art. 10.

32. *Id.* art. 13.

33. *Id.*

34. ICCPR, *supra* note 24, pmbl.

35. *Id.* (entered into force Apr. 17, 2008, and ratified by Pakistan June 23, 2010).

36. *Id.* art. 7. The Universal Declaration of Human Rights was adopted by the U.N. General Assembly in 1948 following World War II and was the U.N.’s first declaration guaranteeing human rights for all people across the globe. *See* G.A. Res. 217 (III) A, pmbl.(Dec. 10, 1948). Included in these inherent rights is the exact same language found in the ICCPR. Pakistan is one of forty-eight countries to adopt the resolution at its outset. *See id.*

37. *See* G.A. Res. 217 (III) A, *supra* note 36, pmbl. It is important to note that there is a Second Optional Protocol to the ICCPR in which those countries that opt in have agreed to take the necessary steps to abolish the death penalty. *See* Optional Protocol to the International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171. While Pakistan is a member of the ICCPR, they have not entered into the Second Optional Protocol. *See id.*

38. *R.S. v. Trinidad and Tobago*, Views, Human Rights Comm., 74th Sess., No. 684/1996, ¶ 2.1, U.N. Doc. CCPR/C/74/D/684/1996 (2002).

39. *Id.* ¶ 2.2.

the psychiatrist signed an affidavit that the defendant was “experiencing auditory hallucinations and is probably suffering from severe mental illness that may be significantly affecting his ability to think and behave normally.”⁴⁰ Although the defendant’s counsel did not make the claim that the defendant suffered a mental illness at the time he was *sentenced to death*, but rather that he was mentally incompetent at the time the *warrant for execution was issued*, the UNHRC nevertheless held that merely issuing a black warrant for execution to a person in that mental condition constituted cruel and degrading punishment in violation of the ICCPR.⁴¹

The UNHRC also held that incarcerating people on death row whose mental state is rapidly deteriorating due to mental illness constituted cruel, inhuman, or degrading punishment and was, thus, a violation of the ICCPR.⁴² In *Francis v. Jamaica*, the defendant’s mental deterioration while on death row was a direct product of being confined on death row for eleven years.⁴³ While there was no psychiatric care at the prison, the prison chaplain noted that over the course of the defendant’s confinement he had lost contact with reality, coupled with moments of lucidity followed by bursts of paranoia.⁴⁴ As a result, the UNHRC held that the incarceration of a person, in conjunction with a rapidly deteriorating mental state over such a substantial amount of time, constituted cruel and degrading punishment.⁴⁵

C. Further Guidance by the International Community

The international community has set this bright-line standard against the execution of individuals with mental illness since the 1980s.⁴⁶ On May 25, 1984, the U.N. Economic and Social Council ratified the *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, which states that in countries that have not abolished capital punishment, “persons who have become insane” shall not be

40. *Id.* ¶ 2.6.

41. *Id.* ¶ 7.2. The record showed that it was clear that “the [defendant’s] mental state at the time of the reading of the death warrant was obvious to those around him and should have been apparent to the prison authorities.” *Id.*

42. *Francis v. Jamaica*, Views, Human Rights Comm., 54th Sess., No. 606/1994, ¶ 9.2, U.N. Doc. CCPR/C/54/D/606/1994 (1995); *see also* Pratt & Morgan v. Jamaica, Human Rights Comm., 35th Sess., Nos. 210/1986 & 225/1987, ¶ 13.7, U.N. Doc. A/44/40, 230 (1989).

43. *Francis v. Jamaica*, No. 606/1994, ¶ 3.7.

44. *Id.* The chaplain also noted that there was no psychiatric care at the prison, but that in his five-year career on death row, it was of his opinion that the defendant needed psychiatric help.

45. *Id.* ¶¶ 9.2, 10.

46. *See* Economic and Social Council Res. 1984/50 (May 25, 1984).

sentenced to death.⁴⁷ On January 25, 1996, the United Nations Report of the Special Rapporteur on Extra-Judicial Summary or Arbitrary Executions asserted that international law fully recognizes a special restriction on the use of the death penalty on “mentally retarded or insane persons.”⁴⁸ In 2000, the UNCHR continued this trend when it published Resolution 2000/65, proclaiming that all states that still implement the death penalty are specifically prohibited from imposing the death penalty “on [a] person suffering from any form of mental disorder.”⁴⁹ Lastly, the U.N.’s General Assembly, in its Sixty-Second Session, adopted a Resolution that orders countries utilizing the death penalty to fall in line with international standards that safeguard mentally ill individuals from being executed, pursuant to the U.N. Economic and Social Council of May 1984.⁵⁰ Along with the CRPD and the ICCPR, there is a long history of well-established international standards that clearly prohibit the death penalty for this specific population.

D. Implications of Executing Imdad Ali

While the international community recognizes that countries that have adopted the death penalty are still obligated to comply with international human rights standards, execution of individuals with severe mental illnesses is a clear violation of these standards.⁵¹ Although the CRPD was an admirable step for Pakistan in guaranteeing the inherent right to life for people with disabilities and to prevent discrimination against them in the legal framework, Pakistan has failed to take the proper steps to truly implement it within its borders.⁵² Even though Pakistan ratified the CRPD in July 2011, a recent report in early 2016 has shown that Pakistan has an outdated census and does not know how many people with disabilities live in the country.⁵³ The same report also observes that even though the CRPD obligates Pakistan to “adopt all appropriate legislative, administrative and other measures for the

47. *Id.* ¶ 3.

48. Bacre Waly Ndiaye (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), *Thirteenth Rep. on Extrajudicial, Summary or Arbitrary Executions*, ¶ 555, U.N. Doc. E/CN.4/1996/4 (Jan. 25, 1996).

49. Comm’n for Human Rights Res. 2000/65, U.N. Doc. E/CN.4/RES/2000/65 at 2 (Apr. 26, 2000).

50. G.A. Res. 62/149, ¶ 2(a) (Dec. 18, 2007).

51. *See Pakistan: Stop Execution of Death Row Prisoner with Mental Disability*, AMNESTY INT’L (Sept. 26, 2016), <https://www.amnesty.org/en/latest/news/2016/09/pakistan-stop-execution-of-death-row-prisoner-with-mental-disability/>.

52. *See* Imaan Mazari-Hazir, *PWDs in Pakistan*, THENEWS.COM (Feb. 20, 2016), <https://www.thenews.com.pk/print/99530-PWDs-in-Pakistan>.

53. *See id.*

implementation of the rights recognized in the present Convention,” Pakistan has yet to submit its initial report to the corresponding U.N. committee.⁵⁴ Thus, while the CRPD does not protect the mentally ill from being sent to death row per se, Pakistan has shown that it is lagging in giving those with mental illness the appropriate accommodations they need in order to properly function both in society and the legal system.

Although the ICCPR does not outlaw capital punishment, the UNHRC has ruled that both issuing an execution warrant to a person with severe mental illness and incarcerating a person on death row amounts to “inhuman or degrading treatment or punishment” that violates international law.⁵⁵ If Ali were to be executed in Pakistan, it is clear that it would amount to cruel and degrading punishment. The UNHRC held in *Sahadath* that the mere issuance of a black warrant to a mentally ill individual is a violation of article 7, even when the defendant’s counsel claimed that his client did not have a debilitating mental condition when he was given the original sentence.⁵⁶ Even if one were to accept *arguendo* that Ali was not mentally ill at the time he was given his verdict in 2002, by the time the court issued his black warrant on July 26, 2016, two completed medical reports by state officials clearly illustrated that Ali was suffering from paranoid schizophrenia.⁵⁷ As a result of *Sahadath*, issuing Ali’s black warrant amounts to a violation of article 7 of the ICCPR.⁵⁸

However, it is well established that Ali was already suffering from paranoid schizophrenia as far back as 1998, and a medical assessment before his murder charges indicated that he suffered from psychosocial disabilities that should be treated upon his entrance into a medical facility—an option that he did not have access to given his family’s financial condition.⁵⁹ Thus, in conjunction with his medical diagnoses

54. See *id.*; CRPD, *supra* note 24, art. 4(1)(a). It is noted that:

while Pakistan has created specialised commissions for the protection of human rights, such as the National Commission for Human Rights (NCHR), the National Commission on the Status of Women (NCSW) and the National Commission for Child Welfare and Development (NCCWD), there is no organisation specifically mandated to protect and promote the rights of PWDs.

See Mazari-Hazir, *supra* note 52.

55. ICCPR, *supra* note 24, art. 7.

56. *Sahadath v. Trinidad and Tobago*, Views, Human Rights Comm., 74th Sess., No. 684/1996, ¶ 7.2, U.N. Doc. CCPR/C/74/D/684/1996 (2002).

57. See *Mst. Safia Bano v. Home Department, Government of Punjab, Lahore & others*, (2016) 37 PLD (SC) ¶ 2 (Pak.).

58. See *Sahadath*, No. 684/1996, ¶ 7.2.

59. See *UN Rights Experts Urge Pakistan Authorities To Halt Execution of Man with Disability*, *supra* note 10; *Imdad Ali*, *supra* note 9.

while in prison, there is clear and convincing evidence that Ali's mental condition had been deteriorating well before his original verdict and well before the court issued his black warrant. If the UNHRC found a violation of article 7 merely at the time of the issuance of a black warrant, then clearly Pakistan violated article 7 for inhuman or degrading punishment.⁶⁰

Furthermore, Ali has been incarcerated since his arrest in 2001 and has a clear history of paranoid schizophrenia as far back as 1998.⁶¹ The UNHRC found it a violation of article 7 of the ICCPR on inhuman or degrading punishment for incarcerating the defendant in *Francis* for twelve years during which his mental health had been rapidly deteriorating, despite the fact that there were no mental health officials available at the prison to properly document his condition.⁶² Ali has been incarcerated on death row for approximately sixteen years, and, unlike the defendant in *Francis*, state mental health specialists reported detailed documentation regarding his current mental state.⁶³ Thus, it seems that Ali's incarceration, given his mental illness over such a long span of time, would violate article 7 under the UNHRC's ruling in *Francis*, once again violating international human rights.⁶⁴

With Ali's life in question, Pakistan must take the opportunity to reaffirm the CRPD and make conscious strides towards giving individuals with disabilities—including those with mental illness—the inherent rights afforded to them in the treaty. From a legal standpoint, executing Ali would directly violate international human rights standards set by the U.N. and would contradict the ICCPR's purpose of affirming the rights derived from the "inherent dignity" of the individual.⁶⁵ If Ali's judgment is upheld, Pakistan would likely face moral sanctions from the U.N. and the rest of the international community, and it would

60. See *Sahadath*, No. 684/1996, ¶ 7.2.

61. See *Bano*, (2016) PLD ¶ 1; *Imdad Ali*, *supra* note 9.

62. See *Francis v. Jamaica*, Views, Human Rights Comm., 54th Sess., No. 606/1994, ¶ 9.2, U.N. Doc. CCPR/C/54/D/606/1994 (1995).

63. See *Bano*, (2016) PLD ¶ 1; *Francis v. Jamaica*, No. 606/1994, ¶ 3.8. Various human rights organizations, such as Reprieve, also have evidence that "[f]ollowing his initial detention, Imdad's mental illness was exacerbated by the poor, overcrowded conditions in the jail," and that he has spent the last three years in solitary confinement after his fellow prisoners complained of his "manic episodes in which he would speak loudly and uncontrollably." Mohammad Zubair Khan, *Pakistan Supreme Court Dismisses Appeal by Man Declared 'Insane' To Halt Execution*, NEWS.COM.AU (Sept. 28, 2016, 3:32 PM), <http://www.news.com.au/lifestyle/real-life/news-life/man-declared-insane-has-execution-halted-in-the-race-for-his-life/news-story/778891a7e5361c43df77145eb75dc5c4>.

64. See *Francis*, No. 606/1994, ¶ 9.2.

65. ICCPR, *supra* note 24, art. 10.

unquestionably put the rights of those with mental illness in jeopardy within the country's boundaries.⁶⁶

III. PAKISTAN'S APPROACH TOWARDS MENTAL ILLNESS AND THE DEATH PENALTY

Under section 306 of the Pakistani Penal Code (PCC), a person who murders another individual shall not be liable for "qisas" when the offender is mentally ill.⁶⁷ Furthermore, section 84 of the PCC says that "nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong.. or contrary to law."⁶⁸ Chapter 34, section 464 of Pakistan's Code of Criminal Procedure notes that the Court of Session or the High Court may, if it has reason to believe that the defendant is of unsound mind, postpone the remainder of the trial pending further medical examination of the individual by a medical specialist.⁶⁹

Furthermore, the Court has established the precedent that domestic laws must be interpreted so as to be consistent with its international legal obligations.⁷⁰ While the Pakistani legislature has put into place statutes that safeguard people with mental illnesses, Ali's latest appeal to the Supreme Court is an exemplary model showing that the criminal justice system fails to properly use them and that Pakistan is not consistent with its international obligations.⁷¹

66. *Pakistan: Pardon Imdad Ali*, DEATH PENALTY NEWS BLOG (Nov. 2, 2016), <https://deathpenaltynews.blogspot.com/2016/11/pakistan-pardon-imdad-ali.html>.

67. PAK. PENAL CODE § 306; *see also id.* § 299 (defining "qisas" as "punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed [murder] in exercise of the right of the victim." Essentially, qisas is the equivalent punishment to "an eye for an eye.").

68. *Id.* § 84.

69. PAK. CODE CRIM. PROC. §§ 464-65.

70. *See "A Cruel and Inhuman Punishment": Execution for the Mentally Ill Under International Law*, JUST. PROJECT PAK. (Nov. 16, 2016), <https://jpp torturewatch.wordpress.com/2016/11/16/a-cruel-and-inhuman-punishment-execution-for-the-mentally-ill-under-international-law/> [hereinafter JPP, *Cruel and Inhuman*]. It must be noted that while Justice Project Pakistan cites *PLD 1958 SC 138* as the case that supports this precedent, and the case is listed on the Office of the Advocate General Punjab's website under a list of Ready Case References, it does not appear to be published for public viewing. *See Ready Case References*, ADVOC. GEN. PUNJAB, <http://www.ag.gop.pk/readycasereferences/h> (last visited Mar. 20, 2017).

71. *See* JUSTICE PROJECT PAK., *supra* note 3, at 31; JPP, *Cruel and Inhuman*, *supra* note 70.

A. Mst. Safia Bano w/o Imdad Ali v. Home Department, Government of Punjab & Others

Ali was convicted under section 302 of the PCC, which states that whoever, with intent to cause death or serious bodily harm to another individual, does, in fact, cause death to that individual, shall receive the death penalty.⁷² After Ali exhausted all routes of appeal, the Supreme Court of Pakistan held:

Schizophrenia is not a permanent mental disorder, rather imbalance, increasing or decreasing, depending the level of stress . . . the prognosis has been improved with drugs, by vigorous psychological and social managements, and rehabilitation. It is, therefore, a recoverable disease, which, *in all the cases*, does not fall within the definition of “mental disorder” as defined in the Mental Health Ordinance, 2001.⁷³

The Court held that “rules relating to mental sickness are not subjugative to delay the execution of [the] death sentence,” meaning that the existence of a mental illness is not sufficient to suspend the death penalty once it has been ordered.⁷⁴ The Court then applied this level of review to Ali, acknowledging the medical records that stated Ali has schizophrenia but refusing to set aside the sentence because the lower courts have already rightly rejected his previous appeals.⁷⁵

The Supreme Court based this holding on two cases decided by the Supreme Court of India in 1988 and 1976.⁷⁶ In *Ram Narain Gupta v. Smt. Rameshwari Gupta*, the Supreme Court of India characterized schizophrenia as mental affliction where the “personality-disintegration” can have varying degrees in the sense that some people may have more of a detachment from reality than others, which is affected by factors such as “endogenous processes” and “psychosocial variables.”⁷⁷ Because schizophrenia affects each person differently, each case must be considered on its own merits.⁷⁸ To support this rationale, the Supreme Court of India pointed to a mental health expert, Karl Menninger, who

72. PAK. PENAL CODE § 302.

73. Mst. Safia Bano v. Home Department, Government of Punjab, (2016) 37 PLD (SC) ¶ 10 (Pak.). The relevant provision in the Mental Health Ordinance, 2001, is the definition of “mental disorder” found in section 2(1)(m): “[M]ental disorder’ means mental illness, including mental impairment, severe personality disorder, severe mental impairment and any other disorder or disability of mind” See The Mental Health Ordinance § 2, No. 8 of 2001, THE GAZETTE OF PAKISTAN EXTRAORDINARY, Feb. 20, 2001.

74. *Bano*, (2016) PLD ¶ 10.

75. *Id.*

76. *Id.* ¶¶ 9, 11.

77. *Ram Narain Gupta v. Smt. Rameshwari Gupta*, AIR 1988 SC 2260, 924-25 (India).

78. *Id.* at 924.

took the position that because schizophrenia affects people differently, the ailment should be spoken of less in terms of a uniform entity and more in terms of a mental imbalance and personality disorganization.⁷⁹ However, the Court did acknowledge that the prognosis has recently been improved through the help of drugs, psychological and social management, and rehabilitation.⁸⁰

In *Amrit Bhushan Gupta v. Union of India*, the Supreme Court of India decided a case that was substantially similar to that of Ali.⁸¹ After the lower courts dismissed the petition to set aside the death penalty, the Court upheld the decision, holding that the objection to the proceedings of the lower courts appears to be an attempt to delay execution of the defendant, which constituted a “gross abuse” of the processes of the Court.⁸² Based on this commentary, the Supreme Court of Pakistan once again acknowledges that while it has reviewed the relevant facts and even acknowledges that Ali’s medical reports reflect that he suffers from paranoid schizophrenia, “rules relating to mental sickness are not subjugative to delay the execution of [the] death sentence,” especially when all circumstances have already been considered by the lower courts.⁸³ In other words, once the lower courts sentenced Ali to the death penalty, the statutes protecting individuals with mental illness are essentially deemed ineligible.⁸⁴

B. *Analysis of the Supreme Court’s Dismissal of Sofia Bano’s Writ Petition*

The reasoning that the Supreme Court of Pakistan used to come to the conclusion that schizophrenia is a recoverable disease and, thus, not a mental disorder is met with several flaws.⁸⁵ The first flaw made by the Court is that it appears to misinterpret the ruling made in *Ram Narain Gupta* in regards to whether or not schizophrenia is a permanent mental disorder.⁸⁶ In *Ram Narain Gupta*, the Supreme Court of India believed that while schizophrenia affects each person differently—fluctuating both in severity and regularity—and, thus, required a review of each case on its own merits, there was still available treatment that could potentially

79. *Id.* at 927.

80. *Id.* at 925.

81. *See* *Amrit Bhushan Gupta v. Union of India*, AIR 1977 SC 608 (India).

82. *Id.* at 5.

83. *Mst. Safia Bano v. Home Department, Government of Punjab*, (2016) 37 PLD (SC) ¶ 13 (Pak.).

84. *See id.*

85. *See id.*

86. *See id.*

ease the effects of the ailment.⁸⁷ Based on this, the Supreme Court of Pakistan makes a large jump from schizophrenia defined as a somewhat manageable disease through proper treatment to schizophrenia as a completely recoverable disease that is not worthy of being recognized as a mental disorder.⁸⁸ Because of this misinterpretation, the Court completely overlooks the fact that the Supreme Court of India's ruling that each case of schizophrenia must be "considered on its own merits," hones in on the manageability of the disease through proper treatment (which, as illustrated by Ali, is not always realistic), and then makes an unfounded leap to the conclusion that schizophrenia is recoverable and, thus, not a mental disorder.⁸⁹ This conclusion flies in the face of the very excerpt the Court takes from *Ram Narain Gupta*, which explicitly defined schizophrenia as "a severe mental disorder."⁹⁰ As a result, Pakistan not only fails to adopt the recommended approach of the very precedent that the Court relies on, but with their decision they deprive individuals such as Ali from the safeguards afforded to them by the PPC.

Furthermore, by relying on *Ram Narain Gupta*, decided by the Supreme Court of India more than twenty-eight years ago, the Court completely ignores a recent case heard by India's top court in 2013 that reflects India's commitment to the international community's treatment of individuals on death row suffering from schizophrenia.⁹¹ In *Shatrughan Chauhan & Anr v. Union of India*, the Court heard pleas from two convicted prisoners to prevent them from being executed after they began to suffer from severe schizophrenia.⁹² The Court noted that India ratified the ICCPR and cited several U.N. resolutions that prohibit countries still using the death penalty from using it against people with mental illness, such as Clause 3(e) of the Resolution 2000/65 and Clause 89 of the Report of the Special Rapporteur on Extra-Judicial Summary or Arbitrary Executions.⁹³ The Court, acknowledging the abundant sources illustrating the international community's condemnation of the death penalty on mentally ill individuals, concluded that "after it is established that the death convict is insane and it is duly certified by the competent doctor . . . we are inclined to consider insanity as one of the

87. See *Ram Narain Gupta v. Smt. Rameshwari Gupta*, AIR 1988 SC 2260, ¶ 14 (India).

88. See *Bano*, (2016) PLD ¶ 10.

89. *Ram Narain Gupta v. Smt. Rameshwari Gupta*, AIR 1988 SC 2260, ¶ 14 (India).

90. *Id.* ¶ 13; see also Barrister Mohammad A. Qayyum, *Schizophrenia and the Courts*, THENEWS.COM (Oct. 28, 2016), <https://www.thenews.com.pk/print/160384-Schizophrenia-and-the-courts>.

91. See *Shatrughan Chauhan & Anr v. Union of India*, (2014) 3 SCC 1 (India).

92. *Id.* ¶ 71.

93. *Id.* ¶¶ 73-75.

supervening circumstances that warrants for commutation of death sentence to life imprisonment.”⁹⁴

With the Supreme Court of India reaffirming its obligation towards current international laws by explicitly holding that individuals with schizophrenia cannot be executed, the Supreme Court of Pakistan essentially relied on primitive cases that are not even followed by the Court they are relying on, instead, choosing to set a questionable standard in regards to how people with mental health illnesses should be treated.⁹⁵ As a result, not only has the Court set a standard that may deprive certain individuals from using a mental health defense in the criminal justice setting, but the Court has interpreted domestic law in a way that is inconsistent with international law, thus, contradicting previous court precedent.⁹⁶

The Supreme Court of Pakistan also took the hard-lined stance that once an individual has been given the death penalty, the statutes provided to safeguard those with mental illness cannot delay execution.⁹⁷ The Court, in an effort to support this stance, cites a piece of *Amrit Bhushan Gupta*, where the Supreme Court of India states that an individual exhausting the appeals process in an effort to get his execution lifted was a “gross abuse of the processes” of the criminal justice system that appears to be a mere attempt to “delay execution of the sentence of death.”⁹⁸ This holding ultimately creates the impression that the Supreme Court of Pakistan, the last line of defense to save a mentally ill individual from execution, is completely unwilling to review the specific facts of the case to determine whether the individual had been properly afforded the rights given to him under Pakistani law. The Court is communicating that because the lower courts have “taken into account all [the] relevant facts and circumstances” and have “discarded [Ali’s] plea of mental illness,” they essentially have very little power, if at all, to intervene.⁹⁹ While this may not have been the intended message that the Court desired to relay, the lackadaisical approach the Court took certainly made it seem that it is willing to take a hands-off approach when mentally ill

94. *Id.* ¶ 79. The Supreme Court of India’s decision in *Shatrughan* was upheld in *Navneet Kaur v. State of Delhi*, with the court holding that the accused cannot be executed given their mental illness and modified the sentence to life imprisonment. *Navneet Kaur v. State of Delhi*, (2014) 7 SCC 264, ¶ 14 (India).

95. *See Shatrughan Chauhan*, (2014) 3 SCC ¶ 79.

96. *See JPP, Cruel and Inhuman*, *supra* note 70.

97. *See Mst. Safia Bano v. Home Department, Government of Punjab*, (2016) 37 PLD (SC) ¶ 13 (Pak.).

98. *Amrit Bhushan Gupta v. Union of India*, AIR 1977 SC 608, 5 (India).

99. *See Bano*, (2016) PLD ¶¶ 12-13.

individuals appeal to the Court and that the Court is not willing to interfere once a defense of mental illness has been rejected by the lower courts. Despite overwhelming evidence through official medical reports during his incarceration, the Supreme Court has expressed an unwillingness to overturn the lower courts.¹⁰⁰

IV. CONCLUSION

The fact that Imdad Ali has been incarcerated over the past sixteen years, during which he has exhausted the appeals process in a desperate attempt to get the legal protection he deserves, is an eye-opening illustration that although Pakistan has statutory safeguards in its criminal code specifically designed to protect mentally ill defendants, the execution of individuals with mental illnesses is by no means an uncommon occurrence within the justice system.¹⁰¹ Pakistan suffers from poor access to mental health treatment outside of the criminal justice system: the most recent *World Health Organization—Assessment Instrument for Mental Health Systems* report, published in 2009, found that there are only five mental health hospitals and approximately 342 psychiatrists in the country, with an estimated population of about 15,000,000 people that suffer from some sort of mental illness.¹⁰² Within the legal system, there is a lack of proper mental training and treatment; this means that individuals, such as Ali, who are poor and who have already failed to receive a proper diagnosis and treatment outside of incarceration, continue to go undiagnosed throughout the entirety of their case, thus, rendering the already oft-ignored safeguards protecting mentally ill individuals useless.¹⁰³ Pakistan's failure to accommodate individuals with mental illnesses both within society and in the justice system has the international community questioning the country's willingness to develop the necessary and proper legislative and judicial

100. Zubair Khan, *supra* note 63.

101. See JUSTICE PROJECT PAK., *supra* note 3, at 31.

102. A seminar hosted in 2015 by the Pakistan Association for Mental Health and in collaboration with the Human Rights Commission of Pakistan and Mental Health Forum reported that the number of trained psychiatrists in the country has only risen to about 380. See *Mental Health, Survey Says Only 380 Trained Psychiatrists in Pakistan*, EXPRESS TRIB. (Apr. 7, 2015), <https://tribune.com.pk/story/866147/mental-health-survey-says-only-380-trained-psychiatrists-in-pakistan/>; Komal Anwar, *Mental Health Care: Mind Matters*, EXPRESS TRIB. (May 24, 2015), <https://tribune.com.pk/story/889519/mental-health-care-mind-matters/>; WORLD HEALTH ORG. [WHO], MENTAL HEALTH SYSTEM IN PAKISTAN 5, 18 (2009), http://www.who.int/mental_health/pakistan_who_aims_report.pdf.

103. See JUSTICE PROJECT PAK., *supra* note 3, at 31.

mechanisms to ensure that those with mental illness are guaranteed the “inherent dignity” required by the CRPD.¹⁰⁴

While the Court has once again stayed Ali’s execution to conduct further medical reports following pressure from the international community, it is clear that any outcome other than a lift of his execution would undoubtedly violate well-established international law. Holding Ali on death row for such a substantially long period of time while his mental condition deteriorates, as well as authorizing a black warrant going forward with his execution, standing alone, violates the ICCPR’s prohibition of cruel and inhuman punishment.¹⁰⁵ If the Supreme Court does, in fact, hold that Ali may be executed and follows through with it, this would further violate the ICCPR and the slew of international statutory provisions passed by the U.N. that binds Pakistan from prohibiting the sentencing to death of mentally ill individuals.¹⁰⁶

Pakistan would contemporaneously be violating its own domestic laws, which the Supreme Court noted through prior precedent must be interpreted in a manner that is consistent with international obligations.¹⁰⁷ A holding that schizophrenia is not a mental disorder under domestic law certainly would contradict international law, and it would ignore the statutory safeguards passed by the legislature barring execution of those who have been deemed to be mentally incompetent.¹⁰⁸ The Court inexcusably cites archaic court decisions settled by the Supreme Court of India while simultaneously failing to inherit the very standards that those decisions urge should be implemented in circumstances surrounding mentally ill defendants.¹⁰⁹ Instead, the Court opts to incorporate a sweeping conclusion that schizophrenia is not a mental disorder.¹¹⁰ The Court’s rationale is ignorant of a more recent court decision settled by the Supreme Court of India, which affirmatively acknowledges international law and declares that the country is prepared to ensure that those with mental illness are no longer subject to capital punishment.¹¹¹ Lastly, the Court commits itself to a dangerous hands-off approach where it will not intervene in cases where the lower courts dismiss any finding of mental illness, thus, subjecting defendants to a “one strike and you’re out

104. CRPD, *supra* note 24, art 1.

105. *See* ICCPR, *supra* note 24, art. 7.

106. *See* ICCPR, *supra* note 24.

107. *See* JPP, *Cruel and Inhuman*, *supra* note 70.

108. *See* PAK. PENAL CODE §§ 299, 306.

109. *See* Shatrughan Chauhan & Anr v. Union of India, (2014) 3 SCC 1, ¶ 79 (India).

110. *See* Mst. Safia Bano v. Home Department, Government of Punjab, (2016) 37 PLD (SC) ¶ 10 (Pak.).

111. *See* Shatrughan Chauhan, (2014) 3 SCC ¶ 79.

approach”—if defendants cannot convince the lower courts that they have a valid mental illness defense, then they should not expect any relief from the Supreme Court.¹¹²

Ultimately, the Supreme Court of Pakistan has a final opportunity to determine what should happen to Imdad Ali, which will have a fundamental impact on how the country will receive mentally ill defendants within its legal system. The final decision will also likely have a causal effect on how the mentally ill population is treated throughout the country, as the outcome may act as a wake-up call for Pakistan to finally provide the necessary accommodations, which the CRPD demands through legislative and administrative policymaking.¹¹³ With Ali's life in the hands of the Supreme Court, the international community, as well as those in Pakistan similarly suffering from mental impairments, must wait to see whether the Court will decide to adhere to international human rights standards, or whether it will opt for the outcome that can only be described as an “irreversible miscarriage of justice.”¹¹⁴

112. See *Bano*, (2016) PLD ¶ 13.

113. See Mazari-Hazir, *supra* note 52.

114. Zubair Khan, *supra* note 63.