



Al-Azva الأضواء

ISSN 2415-0444 ;E 1995-7904

Volume 36, Issue, 55, 2021

Published by Sheikh Zayed Islamic Centre,
University of the Punjab, Lahore, 54590 Pakistan

Premature Release of Old Age, Terminally ill Prisoners Confined in Jails in the Punjab: Cross Cutting Themes and Policy Imperatives

Muhammad Qadeer Alam*

Abstract

As subject of human rights evolved, different jurisdictions across the world recognized incarceration of an old age and terminally ill prisoner without providing proper health care constitute inhuman and degrading treatment. Besides, confinement of afore mentioned group of prisoners is not required because they pose less risk to public safety and security. On the subject, Pakistan Prisons Rules 1978 permit prisons authorities to submit the cases of serious illness, old age and infirmity to the Provincial Government to consider for premature release of the aforementioned categories of prisoners by exercising its power under section 401 Cr.P.C. However, enactment of the Qisas and Diyat Law restricted the power of the Government to suspend, commute and remit sentence of a prisoner, sentenced in offences of murder and hurt, subject to consent of legal heir of deceased or victims. Simultaneously, medical science faced difficulty to provide hard and fast definition of terminally ill and old age person. In view of the foregoing legal and medical complications, the Punjab Provincial Government seldom exercised this power. Resultantly, old and terminally ill prisoners are not granted premature release on compassionate grounds. This research paper attempts to analyze legal, medical and social complications surrounding premature release of prisoners from Punjab Jails.

Keywords: Criminal Justice, Human Rights, Compassionate and geriatric release laws, Section 401 & 402-C of Cr.P.C., Power of *Ulul Amr* to pardon in Islamic Polity

(1)Introduction

At the outset, it is important to define related terminology and rational for premature release of prisoners. Compassionate release is defined as: '[The] release of a terminally ill prisoner to a hospital, hospice, or other healthcare facility'.¹ The term responsibility means: '[That] for which one is answerable or accountable; a trust, duty, or obligation'.²

* Assistant Inspector General, (Judicial & Legal), Punjab Prisons, Lahore

International human rights guideline on the treatment of prisoners and best practices in different jurisdictions across the globe recognize two categories of the prisoners who qualify for premature release including old age and terminally ill prisoners. It is argued if old age and terminally ill prisoners do not get medical care, the prisons authorities are obliged to grant premature release on humane ground.³ Eligibility of premature release comprises two complementary but distinct components medical report and administrative approval.⁴

2) Rationale for Premature Release under International Human Rights Law

As human rights approach to prisons administration evolved, the issue of the needs of medical care of terminally ill prisoners and very old who have high risk to die inside prison saw paramount importance. It is one of the obligations of national authorities to provide health care facilities to prisoners especially serious ill or terminally ill prisoners.⁵ The right of medical care is treated as fundamental right based on right to life. The legality of premature release of old and terminally ill prisoner is based upon two main principles. Firstly, no prisoner is 'subject to cruel, inhuman and degrading treatment'.⁶ In this regard, International Covenant on Civil and Political Rights and Universal Declaration of Human Rights prohibit to put any person under torture or duress.⁷ Besides, Nelson Mandela Rules for the treatment of offenders reiterate that prisons authorities must not put any prisoner under any kind of torture under all circumstances.⁸ Death of terminally ill and old person is not justifiable in jail as a part of their punishment.

Secondly, physical vulnerabilities and fragile health status may alter the justification for imprisonment. Criminal justice system in vogue across the world recognize four theories of punishment retribution, rehabilitation, deterrence and incapacitation. The confinement of person is not relevant who is 'cognitively impaired' to be aware of punishment. At the same, incarceration of person who is too sick to participate in rehabilitation, or too functionally compromised to pose a risk to public safety does not in conformity with the four principles of justifications for incarceration.⁹

Thirdly compassionate release programs envisage to reduce financial burden on national exchequer and allow the prisoners to die with dignity amidst their friends and relatives.¹⁰ The premature release of terminally ill prisoner aims at providing opportunity to get release from unique and 'isolating environment of prison'.¹¹ In fact those old prisoners

who need extra medical care should be prioritized and considered for release on compassionate grounds.¹²

Last but not least, one of the main objectives of prison system is not to incarcerate old age or terminally ill persons.¹³ In fact, many studies on the topic have reflected that old age reduces the rate of recidivism.¹⁴ Owing to less security risk and least possibility to commit offence again, older prisoners deserve more for early release than younger offenders.¹⁵

3) Case law on premature release

Different courts across the globe has maintained that seriously ill or dying prisoners in detention violates the right not to be subjected to inhuman or degrading treatment and punishment. The European Court of Human Rights in *Keenan v. UK* observed that inadequate medical care, including mental health care tantamount to inhuman and degrading punishment.¹⁶ In *Price v. UK*, the Court maintained that hard conditions of imprisonment enhance pain and misery to disabled persons which tantamount to inhuman and degrading treatment under Article 3 of the European Convention.¹⁷

In *Moussel v. France*, the European Court of Human Rights held that confinement of serious ill prisoner without proper medical care tantamount to inhuman or degrading treatment.¹⁸ In conclusion, the Court considers that the applicant became victim of inhuman and degrading treatment because he suffered from cancer during his detention.¹⁹

In 2004, High Court in Pretoria, South Africa, provided relief to prisoner sentenced for fifteen years for the offence of armed robbery because he suffered from chronic leukemia. Doctor predicted that the prisoner will not sustain more than three months. The Court observed: his continued incarceration violates his human dignity and security, and the very punishment itself becomes cruel, inhuman and degrading'.²⁰

On 27.07.2018, the August Supreme Court of Pakistan, directed all the Provincial Governments to 'take appropriate steps for release of terminally ill prisoners in accordance with proper rules and standard operating procedures (SOPs) so that such persons are released on the basis of a structured procedure rather than anybody's whim and caprice and in an arbitrary manner'.²¹ In 2019, Islamabad High Court in *Khadim Hussain vs. Secretary, Ministry of Human Rights, Islamabad* reinforced that prisons authorities must exercise their power to take steps to reduce physical hardships to save life of prisoners. In this regard, the court observed that 'it is the duty of the latter to ensure that a prisoner suffering from a serious illness or disease is not only provided with the highest

attainable standard of health services but, in exceptional circumstances, to suspend the sentence by exercising powers vested under the Prisons Rules read with section 401 of Code of Criminal Procedure(Cr.P.C).²²

On 08-01-2021, Calcutta High Court in *suo moto* case observed: ‘We are of the view that a prisoner suffering from terminal illness should be treated with sympathy and should be permitted to breathe his last in the comforting company of his family and friends, if, and to the extent, possible’.²³ The court ordered the state government to implement the order make necessary amendment in Jail Rules without loss of any time. The Court alarmed that during the delayed process of amendment in rules, ‘many or all of the (terminally ill prisoners) TIPs may die in jail in desolate and very unhappy conditions without the minimum human dignity’.²⁴

4)Discussion on Issues and Challenges of Premature Release of Prisoners

Comparative study shows that many countries have introduced provisions in its statutes to provide benefit to the prisoners on the ground of illness and old age but they are not being widely utilized.²⁵ The following issues and challenges have been identified in the premature release of prisoners.

(A) Definition of terminally ill and prediction of period of life expectancy:

Though different systems in the world have defined terminally ill. In fact, it is a big challenge for the medical science to predict exact period of life expectancy of persons diagnosed with disease terminating to death. Many jurisdictions have defined prisoner as terminally ill if diagnosed from fatal disease and expected life is less than 6 months.²⁶ The early release regulations of Scotland permit to consider the cases of those serious ill prisoners who are diagnosed with period of life expectancy less than three months.²⁷ UNDOC publication refers terminal illness to a situation wherein no possibility of improvement in the disease culminating to death.²⁸ Coyle maintains that ‘any diagnosis made or advice offered by prison medical staff should be based on professional judgement and in the best interests of the prisoner’.²⁹

One of the challenge of medical science prognosis is difficult to spell out accurate period of life expectancy for the prisoners suffering from advanced stage of diseases of liver, heart, and lung. Even prediction in the cases of prisoners suffering from cancer is not accurate because it degenerates during the last weeks of life. Sometimes prisons authorities

and government confront paradoxical situation due to prognosis of terminal illness. A delay in compassionate release of an eligible prisoner may cause death inside the jail before the completion of process of grant of remission. On the other hand, if prisoner is released too early, and prisoner survived longer than expected may call in question the credibility of prison authorities and medical prognosis.

On 20-08-2009, Scottish Prisons Service released Abdel Baset Ali Mehmet al-Megrahi, 57-year-old convicted for charged with offence of the Lockerbie bombing, from Greenock Prison due to diagnose with terminal prostate cancer.³⁰ The prisoner survived nearly three years after his date of release from prison against the period of three months as it was predicted by medical report. Consequently, both in the country and abroad many raised questions on the genuineness of process of compassionate release on medical rather attributed it as a release on political, economic and diplomatic ground. In Scotland, 'opposition parties in the Scottish Parliament heaped criticism onto MacAskill'.³¹ The US president Barack Obama criticized the decision of release as 'a mistake'. At the same time, some US victims' families showed resentment on decision of premature release of perpetrator of crime of terrorism. On July 8, 2010, four US senators requested Government of United Kingdom to probe into early release of Megrahi. On the other hand, Kenny MacAskill, defended his decision in his book in accordance with prevalent Scottish law and the recommendation of medical report.³²

Pakistan prisons rules contain no definition of the word terminally ill or serious illness. For the utility of prisons authorities in Pakistan, it is requisite for premature release that medical board should report with period of life expectancy as well as functional decline. In this regard, any miscalculation lead to multiple risks in society like Pakistan which characterized with a deep sense of revenge and family feud.

(B)Procedural Impediments

It is a challenge for the prisons authorities to chalk out standard operating procedure for a compassionate release that should not be bureaucratic enough resulting in the death of patients in prison during the course of fulfilling its formalities. In context of Pakistan, the process of premature release involves approval of five offices of provincial government including Superintendent Jail, Medical Superintendent of DHQ concerned, Inspector General of Prisons, Home Secretary and the Chief Minister. If the petition for premature release is not actively persuaded by relative or friend, the probability of delay cannot be ruled

out. In this context, it is prime obligation of the prison authorities to chalk out comprehensive policies dealing with programs on compassionate release to provide relief to terminally ill and elderly inmates. The government should make rules and procedures for premature release of prisoners that must be flexible enough to conclude without involving delay for a long period.³³

(C) Terminally ill prisoners who are without their families

The dilemma for the prisons authorities for those persons who are terminally ill and their families are unwilling or unavailable to care. In case of elderly persons, they may not have a ready-made support network when they return to society.³⁴ In these cases, 'residential placement is not an option, prisons cannot parole an individual to the street'.³⁵ On the other hand, confinement of such prisoner in jail had impact on terminally ill prisoner due to unique settings of jail as well as staff. The factor of mistrust among the confined inmate, prisons staff and medical staff complicates the situation. This mistrust leads to surge difficulties on both sides, including despondency and frustration in a terminally ill inmate and anger and lassitude in prisons staff.³⁶

(D) Definition of old offenders

To improve the procedure and policies for the health care of the old persons in prisons, a uniform definition for "older offenders" is a prerequisite.³⁷ Time and again, correctional health care experts have underlined need to reach a consensual definition.³⁸ Gerontology literature reckons 65 years as threshold to define old person, whereas the United Nation considers 60 years as baseline.³⁹ Classification of older persons have further sub classification into young-old (65-74 years), the middle-old (75-84 years) and the oldest-old (85 years and older). However, there is no consensus on the age of 'old' prisoners.⁴⁰ Likewise, in Pakistan, no statute defines old age that qualifies to grant of premature release. However, the President of Pakistan provides total remission to those prisoners who have undergone one third of their total sentence but not sentenced and convicted in offence of culpable homicide.⁴¹ In 2020, almost 101 years old prisoner, sentenced for the offence of murder, was passed away in District Jail Gujrat despite the fact he filed petition in the Lahore High Court for premature release on the ground of old age. The Government took the plea that the sentence cannot be commuted, remitted or suspended without the consent of legal heir of deceased family under section 402-C of Cr. P.C.

(E) Hybrid Criminal Justice System in Pakistan

Pakistan confronts specific challenge for premature release of prisoner due to its hybrid criminal justice system -common law and sharia. The Constitution of Pakistan binds that 'no law can be implemented which is repugnant to the Quran and Sunnah'.⁴² Pursuant to this objective, the Constitution of Pakistan mandates the Islamic Council to advise the parliament to bring existing laws in conformity with injunctions of Islam.⁴³ Besides, the Federal Shariat Court is empowered under the constitution to examine any law or provision whether repugnant to Islamic injunctions.⁴⁴ As a part of the process of Islamization, Federal Shariat Court held in *Habib-ul-Wahab Alkhairi and others vs Federation of Pakistan* that provisions of section 401, 402, 402-A & 402-B Cr. P. C. containing powers of Provincial and Federal Government to suspend, commute and remit any sentence, are repugnant to the injunctions of Islam being not in consonance with the Holy Quran and the Sunnah.⁴⁵ The Federal Shariat Court, therefore, directed the Federal Government as well as Provincial Government to add a proviso to the relevant sections that such power shall be exercisable only if the offences related to Haq Allah liable to Ta'zir and that too 'in the public interest' as guided by Shari'a.⁴⁶

Since the promulgation of Qisas and Diyat Ordinance in 1990, section 402-C of Cr. P.C. restricts the powers of the Provincial Government and Federal Government to commute, remit and suspend the sentence of a prisoner who are convicted for the offences including hurt and murder (Chapter XVI of the PPC) without the consent of victim or heirs of the deceased or victim.⁴⁷ In this regard, corresponding amendments were made in section 345 Cr.P.C whereby offences mentioned in Chapter XVI of PPC were made compoundable with the consent of the victim or the legal heirs of deceased.

There is general consensus among religious scholars that head of State (*Ulul Amr*), or his Governor may in best interest of public exercise his power to pardon, remit and commute sentence of convict who has been prosecuted for an offence liable to *ta'zir*. On the other hand, ruler or head of state is not empowered in matter of Hudood, Qisas and Diyat.⁴⁸ Abdul Qadir Awdah, Egyptian judge and jurist, who himself remained death row prisoners during the reign of Jamal Abdul Nasir, explains in his treatise that power of a ruler to waive off a sentence is subject to injunctions of Quran and public interest.⁴⁹ Prosecution cannot be drawn in an offence liable to Qisas except by the heirs of murdered or the victim in case of hurt.⁵⁰ Ruler is authorized to withdraw from prosecution of a person who is tried in an offence liable to *ta'zir* whether before the charge is framed against him or after that, if it is in public interest.

Apart from *hudud*, *qisas* and *diyat*, the bulk of criminal law is

linked with the right of the community. On the subject, the government can make appropriate legislation without violating ‘substantive principle of *shariah*’.⁵¹ This is called the *siyāsah* jurisdiction of the government.⁵² In the opinion of Cheriff Bassiouni Islamic criminal justice is based on *siyāsah*, ‘a great deal of it is open to the input and influence of judicious policy (*siyāsah shar iyyah*)’.⁵³

Siyāsah is not in violation or above the *shariah* but is in conformity with the guiding principles as dictated by God and his messenger.⁵⁴ It is power that rests with rulers to promote and safeguard the objective of *shariah*.⁵⁵

Keeping in view, the higher objectives of Islamic Law, the Hanafi jurists acknowledge this right for the ruler under the doctrine of *siyāsah*. Thus, for instance, they allow him punish a habitual offender who has committed murder even after the heirs have agreed to forgive him with or without payment of compensation. There are many other aspects of this authority of the government and it is worth noting here that throughout Muslim legal history, this doctrine of *siyāsah* played an important role in the administration of justice. The *qanun* of the Ottoman Sultans was based on *siyāsah*.⁵⁶ So was the *Diwan-i- Siyasat* established by the Sultan of Delhi.⁵⁷ In Pakistan, we have revived this doctrine in Section 311, which mentions this rule using the broader concept of *fasad fil arz*.

5) Recommendations

Under Islamic jurisprudence, it is clear that government may suspend the sentence of terminally ill or old person to grant a premature release who are sentenced and convicted as *Tazir*. The question arises whether the Federal or the Provincial Government may suspend, remit or commute sentence of a convicted prisoner on the compassionate ground, who have been sentenced and convicted for the offence of murder and hurt without seeking consent of legal heirs of deceased or victim. This research makes the following recommendations:

(a) The Government may file a reference to seek advice of Islamic Council whether the Government is empowered to suspend sentence of terminally ill or old persons who are convicted in the offences under Chapter 16 of PPC without the consent of legal heir or victim ; (b) Establishment of Independent Standing Medical Board on provincial level to advice on palliative medicine, geriatrics, and correctional health care; (c) Pakistan Prisons Rules need to be amended dealing with release of prisoner on compassionate ground due to infirmity and old age; (d) The procedure for the release of prisoners must include transparent method of risk assessment. It also includes a clear criterion for eligibility for premature release in case of old age or serious illness; (e) The criterion for premature release of convicted prisoners must include the concurrence of the

Appellate Court if appeal of a convicted prisoners is pending with the Supreme Court or the High Court; and (f) the process of review of application submitted for premature release should not be too lengthy. A time limit must be reflected for the disposal of application by Home Department and Punjab Prisons.

(6) Conclusion

In line with international instruments on the treatment of prisoners and human rights approach to prisons administration, two categories of prisoners namely old age and suffering from terminal illness must be granted premature release on the two major grounds: Firstly, prisons is not a place to keep such persons who do not pose any danger to the society; secondly, confinement of a terminally ill and an old person without treatment tantamount to torture, inhumane and degrading treatment. Like other jurisdictions in the world, Pakistan has also provisions in its statute to grant premature release to old and terminally ill inmates. However, these provisions have not been exercised due to multiple reasons which may be enumerated as: (a) lack of unanimous definition of terminally ill and old age; (b) issue of exact prediction of life expectancy of terminally ill prisoner by medical science; transparent and clear eligibility criteria for grant of premature release; restriction on power of Provincial as well as Federal Government to suspend, remit and commute the sentence of prisoners who are sentenced against offences of murder and hurt (Chapter Sixteen of Cr. P.C.) without the consent of legal heir of deceased family or victim.

The paper concludes with the recommendations: (a) Government of Pakistan should seek guidance from Islamic Council to provide relief to prisoner who are sentenced for the offence of murder and hurt; and do necessary amendment in Pakistan Prisons Rules that envisage a clear eligibility criteria for the premature release with time line.

References

- 1 Black's Law Dictionary (10th Ed. 2014), p.1292.
- 2 Black's Law Dictionary (10th Ed.2014), p.1292.
- 3 Kendra A. Hollern, 'Dying with Dignity: Where is the Compassion in Compassionate Release Programs?' (2018) *International Journal on Responsibility* 40, p.41.
- 4 Brie A. Williams, Rebecca L. Sudore, Robert Greifinger and R. Sean Morrison, 'Balancing Punishment and Compassion for Seriously Ill Prisoners' (2011) 155(2) *Annals of Internal Medicine*,

- <https://www.acpjournals.org/doi/10.7326/0003-4819-155-2-201107190-00348>> accessed on 13 Feb 2021.
- 5 Andrew Coyle, *A Human Rights Approach to Prisons Management* (London: International Centre for Prisons Studies, 2009), p.47.
 - 6 Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 5.
 - 7 International Covenant on Civil and Political Rights (ICCPR), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art 7.
 - 8 United Nations Standard Minimum Rules for the Treatment of Prisoner,
 - 9 Brie A. Williams, Rebecca L. Sudore, Robert Greifinger and R. Sean Morrison, ‘Balancing Punishment and Compassion for Seriously Ill Prisoners’ (2011) 155(2) *Annals of Internal Medicine*, <<https://www.acpjournals.org/doi/10.7326/0003-4819-155-2-201107190-00348>> accessed on 13 Feb, 2021.
 - 10 Hollern, Kendra A., ‘Dying with Dignity: Where is the Compassion in Compassionate Release Programs?’ (2018) *International Journal on Responsibility* 40, p.40.
 - 11 Tomris Atabay, *Handbook on Prisoners with Special Needs* (Vienna: UNODC, 2009), p.154.
 - 12 Atabay, Tomris, and Tomris Atabay, *Handbook on prisoners with special needs* (New York: UNODC, 2009), p.140.
 - 13 Heather Habes, ‘Paying for the graying: How California can more effectively manage its growing elderly inmate population’ (2011) 20(2) *Southern California Interdisciplinary Law Journal* 395, p.422.
 - 14 Ken Howse, *Growing Old in Prison: A scoping study on older prisoners* (London: Centre for Policy and Ageing and Prison Reform Trust, 2003), p.25.
 - 15 Julious H. Uzoaba, *Managing Older Offenders: Where do we Stand?* (Ottawa: Research Branch of Correctional Service of Canada, 1998), p.8.
 - 16 *Keenan v. UK* [2001] 33 EHRR 38, para.116.
 - 17 *Price v. UK* [2002] 34 EHRR 53, para.30.
 - 18 *Mouisel v. France* [2004] 38 EHRR 34, para.48
 - 19 *Mouisel v. France* [2004] 38 EHRR 34, para.48
 - 20 *Du Plooy v. Minister of Correctional Services, et al.* [200] 3 ALL SA 613(T)
 - 21 Supreme Court of Pakistan, *Suo Moto Case on terminally ill prisoners*, 2018
 - 22 *Khadim Hussain vs. Secretary, Ministry of Human Rights*, Islamabad in Writ Petition No.4037 of 2019, para.15
 - 23 Calcutta High Court, *The Court in its own motion: In re: Overcrowding in prisons, [WPA 7252 of 2018 With WPA 4510 of 1997 With WPA 5440 of 2020 IA No. CAN/1/2020 (Old No. CAN 3147 of 2020) With WPA 8573 of 2018]* dated 8-01-2021, para. 6.

- 24 Ibid., para. 12.
- 25 John A Beck, 'Compassionate release from New York State prisons: Why are so few getting out?' (1999) 27(3) *Journal of Law, Medicine & Ethics* 216, p.220.
- 26 Anno, B. Jayne, Camelia Graham, James E. Lawrence, Ronald Shansky, Judy Bisbee, and John Blackmore, *Correctional Health Care: Addressing the needs of elderly, chronically ill, and terminally ill inmates* (Middletown: *Criminal Justice Institute*, 2004), p.12.
- 27 Prisoners and Criminal Proceedings (Scotland) Act 1993.
- 28 Tomris Atabay, *Handbook on Prisoners with Special Needs* (Vienna: UNODC, 2009), p.143.
- 29 Andrew Coyle, *A Human Rights Approach to Prison Management* (London: International Centre for Prisons Studies, 2009), p.54.
- 30 www < <https://www.bbc.com/news/uk-scotland-south-scotland-10852766> > accessed on 23 Jan 2021.
- 31 Daniel Kenealy, 'Releasing the Lockerbie Bomber: National Interests, Intergovernmental Relations and Para-Diplomacy' (2017) 26(4) *Scottish Affairs* 411, p.412.
- 32 Kenny MacAskill, *The Lockerbie Bombing: The search for justice* (Hull: Biteback Publishing, 2016), p.243.
- 33 Tomris Atabay, *Handbook on Prisoners with Special Needs* (Vienna: UNODC, 2009), p.154.
- 34 United Nations Office on Drug and Crimes, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment* (Vienna: United Nations Publication, 2007), p.54.
- 35 John F. Linder & Frederick J. Meyers, 'Palliative and End-of-Life Care in Correctional Settings' (2009) 5 *Journal of Social Work in End-of-Life & Palliative Care* 7, p.26.
- 36 Mary-Frances O' Connor, 'Finding boundaries inside prison walls: case study of a terminally ill inmate' (2004) 28(1) *Death Studies* 63, p.64.
- 37 Cyrus Ahalt, Robert L. Trestman, Josiah D. Rich, Robert B. Greifinger, and Brie A. Williams, 'Paying the price: the pressing need for quality, cost, and outcomes data to improve correctional health care for older prisoners' (2013) 61(11) *Journal of the American Geriatrics Society* 2013, p.2019.
- 38 Williams, B.A., Stern, M.F., Mellow, J., Safer, M. and Greifinger, R.B., 'Aging in correctional custody: setting a policy agenda for older prisoner health care', (2012) 102(8) *American Journal of Public Health* 1475, p.1490.
- 39 United Nations, *World Population Aging* (New York: Department of Economic and Social Affairs & Population Division' 2015), p.4.
- 40 Helene Merkt, Sophie Haesen, Leila Meyer, Reto W. Kressig, Bernice S.

- Elger and Tenzin Wangmo, 'Defining an age cut-off for older offenders: a systematic review of literature' (2020) *International Journal of Prisoner Health*, p.1.
- 41 Notification issued by Ministry of Interior on grant of Remission by the President of Pakistan under Article 45 of the Constitution of Pakistan 1973.
 - 42 The Constitution of Pakistan, 1973, Article, 227(1).
 - 43 The Constitution of Pakistan, 1973, Article 230(1) (c).
 - 44 The Constitution of Pakistan, 1973, Article 203(D).
 - 45 *Habib-ul-Wahab Alkhairi and others vs. Federation of Pakistan*, PLD 1991 FSC 236, p.267.
 - 46 *Habib-ul-Wahab Alkhairi and others vs. Federation of Pakistan*, PLD 1991 FSC 236, p.258.
 - 47 Criminal Law (Amendment) Ordinance, 1990, Section 8.
 - 48 *Habib-ul-Wahab Alkhairi and others vs. Federation of Pakistan*, PLD 1991 FSC 236, p.247.
 - 49 Abdul Qadir Awdah, *Al-Tasri' al-Jinai al-Islami vol.1* (Beruit: Dar al-Kitab al-Arabi,), pp.256-260.
 - 50 Dr. Tanzil-ur-Rahman, *Islami Qawaneen Hudood, Qisas, Diyat and Ta'zair*, 1st Edition (Lahore: Qunooni Kutab Khana, 1981), pp.299-301.
 - 51 Muhammad Hashim Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation* (Oxford: Oxford University Press, 2019), p.195.
 - 52 Muhammad Mushtaq Ahmad, 'The Doctrine of Siyasaḥ in the Hanafi Criminal Law and its Relevance to the Pakistani Legal System' (2015) 52(1) *Islamic Studies*, pp. 29-55.
 - 53 Cf. M. Cheriff Bassiouni, *The Shari'a and Islamic Criminal Justice in Time of War and Peace* (New York: Cambridge University Press, 2014), p.120.
 - 54 Ibn Qayyim al-Jawziyyah, *al-Ṭurūq al-hukmiyyah fī 'l-Siyāsah al-Shariyyah* (Cairo: al Mu'assissah al-'Arabiyyah li'l-Ṭibā'ah, 1380/1961), p.28.
 - 55 Ibrāhīm b. 'Alī Ibn Farḥūn, *Tabṣirah al-Hukkām fī Uṣūl al-Aqīdah* (Cairo: al- Maṭba'ah al Bahiyyah, 1302), p.106.
 - 56 Mehmet Şakir Yılmaz, 'Crime and punishment in the imperial historiography of Süleyman the magnificent: An evaluation of Nişancı Celalzāde's view' 2007 60(4) *Acta Orientalia* 427: p.434.
 - 57 Ishtiaq Hussain Qureshi, *The Administration of the Sultanate of Delhi* (Lahore: Sheikh Muhammad Ashraf, 1942), p.120.