

# **Efficacy of Death Penalty in the Penal System: An Analysis in light of the Protection of Human Rights in Bangladesh**



## **LL.M THESIS**

**A RESEARCH MONOGRAPH  
SUBMITTED IN PARTIAL FULFILLMENT OF THE CREDIT REQUIREMENTS  
FOR AWARDING THE DEGREE OF MASTER OF LAWS BY  
DAFFODIL INTERNATIONAL UNIVERSITY**

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To

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**Subject: Prayer for Submission of Dissertation**

Dear Sir,

It is an excellent pressure on behalf of me that I even have been ready to make research on **“Efficacy of Death Penalty in the Penal System: An Analysis in light of the Protection of Human Rights in Bangladesh”**. In ending this research, I even have given all of my best afford to make useful research and by collecting all the relevant information from different sources which will fulfill your expectation.

Therefore, I shall remain grateful to you if you undergo this thesis paper for your evaluation and I would be like that if any valuable recommendation is made on your part in this matter. I am always available for any longer clarification of any part of this paper at your convenience.

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Sincerely yours,

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## Letter of Approval

This is to certify that the paper is done “**Efficacy of Death Penalty in the Penal System: An Analysis in light of the Protection of Human Rights in Bangladesh**” is a real work done by Tahiad Tanha Mim, ID:221-38-068, Department of Law, Daffodil International University, done under my supervision in the partial fulfillment for the research work.



03.03.2023

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## **Declaration**

I hereby solemnly declare that the thesis title “Efficacy of Death Penalty in the Penal System: **An Analysis in light of the Protection of Human Rights in Bangladesh**” submitted by me in partial fulfillment of the requirement for the award of the degree of master of laws, Department of Law, Daffodil International University.

I further declare that the research work which presented in this thesis is original and it has not been submitted earlier either partly or wholly to any other university for any academic qualification/certificate/diploma degree. The work which I have presented does not breach any copyright.

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## **Certification**

This is to certify that the thesis on “**Efficacy of Death Penalty in the Penal System: An Analysis in light of the Protection of Human Rights in Bangladesh**” has been prepared by Tahiad Tanha Mim. It is prepared for the partial fulfillment of the requirement for the award of the degree of Master of Laws, Department of Law, Daffodil International University. The research work has been carried out with my guidance and as research of the bonafide work come out successfully.



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## **Acknowledgment**

I would like to confess the immeasurable Graceland propound kindness to the almighty Allah. I express my gratefulness to my research supervisor honorable S M Sinful Haque, Assistant Professor, Department of Law, Daffodil International University who help me cordially in every step of this thesis paper. He gave me valuable time and significant information to complete the thesis paper. With out his proper guidance, it was quit impossible formed to complete the thesis paper.

I also express my gratitude to my parents who encouraged me all the time.

Finally, express thanks to all my classmates and well-wisher.

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## **Dedication**

Firstly, I am showing very much respect and gratefulness to Allah. I would like to express my gratefulness and love to my parents for their encouragement and to provide me with opportunities for higher education. They are still guiding me to be a good human being and motivated me to dedicate myself to the benefit of the country.





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## **ABSTRACT**

This paper examines “Efficacy of Death Penalty in the Penal System: An Analysis in light of the Protection of Human Rights in Bangladesh,” I will discuss the current information, legal matters and situation of Death Penalty in Bangladesh and what is the great effect of Death Penalty in our societies. The objective of the study was to analyze the condition of death penalty and their abolishment effect in Bangladesh. Also the variations of the crime rates and human rights violation of our society were secondary concerns to analyze. The death penalty is basically one of the biggest wrong decisions of mankind. There is no more inferior trouble than that. The criminal was eliminated by the death penalty but no action was taken to eradicate the crime. The death penalty violates the right to life and is a cruel inhuman and degrading punishment for all the people. Basically death penalty is depriving a citizen of his right to life by the state. So new forms of punishment system should be introduced rather than death penalty.

**Keyword:** Death penalty, Human Rights, crimes, Justice

# Chapter 1

## INTRODUCTION

### 1.1 Introduction

One of humanity's greatest follies is the death sentence. The death sentence is a harsh, barbaric, and humiliating punishment for all human beings that breaches the right to life. It makes no difference how the victim is killed in this circumstance. The individual's mental state should not be overlooked prior to execution. There is no greater anguish than this. Despite the fact that the criminal was executed, no effort was made to eradicate the crime. If the offenders are not caught and sentenced to death under the social system, the crime will continue. The death penalty is the state's deprivation of a citizen's right to life. The death penalty is a harsh punishment for a human person and is imposed by the state for significant offenses. The "death penalty" is another term for capital punishment.”

We all know that the death sentence is the most severe and barbaric punishment. Death is also imposed differently in various civilizations and in different ways. One technique was that if someone violated Islamic laws or sacred items, the society would sentence him to death.

The death sentence is the most inhumane, brutal, and merciless punishment. It is a violation of a person's right to life. If an innocent person is unable to prove his innocence for causes beyond his control, he is likely to be sentenced to death. The death sentence has never been proved to be more effective in deterring crime than any other punishment.

Essentially, the death penalty signifies severe punishment. But then there's the death penalty. When a person commits a particularly heinous act, our judicial system applies the death sentence.

But, it calls into question our humanity. When a man dies, all of his knowledge, talents, and dreams perish. And because we lack the ability to give life to anybody, how can we take it? Under these conditions, our debate will continue, and we will cover the death sentence as thoroughly as possible. Although many governments throughout the world abolished the death sentence after World War II, Bangladesh remains an exception. Nonetheless, Bangladesh law has several constraints. Numerous Bangladeshi laws allow for the execution of the death sentence. But, this is the primary flaw in our legislation. Most of Bangladesh's laws need be modified; else, human rights would be violated.

## **1.2 Aims and Objectives of the Study**

It is critical to identify the major goals and objectives of any research. In this article, I will outline all of the goals of this study on the elimination of the death sentence in Bangladesh. Can we state that someone has been convicted of a crime with certainty? It cannot be stated that the death sentence has reduced crime in our country. That is why I believe the death penalty may be followed by a life sentence. Capital punishment is simply the state denying a person of his right to life. In our nation, the death sentence breaches two principles of the Universal Declaration of Human Rights: the right to life and the right to be free.

In the instance of capital punishment, modifying the goal of punishment defeats that objective. The death sentence ruins the life of the culprit. There is no room for self-correction here. It is not feasible to reverse a death sentence after it has been carried out. Yet, if the criminal receives another sentence, the judiciary's error can be corrected. If the death sentence is used as a motivator, innocent individuals may be the victims of self-sacrifice.

The aims and objects of this Research such as follows:

1. To define the word Death Penalty.
2. To explain what is the condition of death penalty in Bangladesh.
3. To identify the rule for Death Penalty in Bangladesh.

### **1.3 Review of Related Literature**

A literature review alerts the researcher to previously completed similar work. While doing research, a literature review broadens and sharpens the researcher's expertise. A survey of the literature displays the researcher's theoretical understanding in his chosen subject of study. It aids in identifying knowledge gaps between past and present researchers. To inform the current study project, some relevant literature has previously been evaluated.

Sikandar Ali Usman (2022), in his research "Right to Live vs. Death Penalty in the Context of Bangladesh," tries to make an acute discussion about how people are hanged and sentenced to death by the state for a variety of offenses, sometimes including those that should not be criminalized, even in the twenty-first century. When we look at our own country, we can see that this form of capital punishment is still legal. Yet according to the Universal Declaration of Human Rights (UDHR) article 3, "Everyone has the right to life, liberty and security of person." In addition, Article 2 of the ECHR, sometimes known as the "Convention Rights," teaches us about the right to life. It suggests that no one, not even the government, has the authority to end our life. It also suggests that the government should make the necessary steps to safeguard life, such as passing laws to protect us and, in certain situations, intervening to defend us when our lives are threatened <sup>1</sup>

Article 2 of the ECHR, sometimes known as the "Convention Rights," teaches us about the right to life. It suggests that no one, not even the government, has the authority to take our life. It also indicates that the government should make the necessary measures to safeguard life, such as passing laws to protect us and, in certain situations, intervening to defend us when our lives are in danger. The paper critically examines national and international instruments, as well as the reasons behind the failure to apply legal precedents in the arrest, remand, and custody of criminals.<sup>2</sup>

#### **1.4 Research Question:**

1. What is the impact of death penalty?
2. Does the death penalty violate human right?
3. Why death penalty should be abolished?
4. The death penalty gives people the opportunity to correct?

#### **1.5 Importance of the Study**

Research studies are critical. A research study is essential for each student; regardless of the research topic, participating in research can increase the student's knowledge. The Death Penalty in Bangladesh: A Research and Analysis Everyone is aware that egregious violations of human rights are a serious problem. The paper focuses on the death penalty's violation of the right to life. I don't believe that fear of the death sentence deters individuals from committing crimes. The death penalty has been in place for a long time, yet it has had little effect on crime. The death penalty ends the life of the criminal. No correction of the criminal himself is possible. Once the death penalty has been imposed, it is not possible to correct a miscarriage of justice. There is no reason to think that the death penalty will reduce crime and murder in our society. Maximum penalty is not a solution for this, mainly it depends on other factors. If people can be educated and behavior can be changed, their state rights can be ensured, then crime will decrease. Most countries in the world have abolished the death penalty.

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<sup>1</sup>Khondokar, Mahfuzul. (2015). Crime and Punishment in Bangladesh. 10.1002/9781118519639.

<sup>2</sup>Usman, Sikandar. (2021). Right to Live vs. Death Penalth in the context of Bangladesh. 10.4896/blr.2017.84564.

## **1.6 Research Methodology**

It is difficult to execute a research project without a technique. The real outcomes of this study activity are mostly dependent on the use of appropriate procedures connected to the issues under consideration. While I created this study, I used Imperial Methods, Analytical Methods, and other research methodologies. Secondary data collecting is my source in this study. I obtain knowledge from a variety of sources, including books, articles, legislation, newspapers, and mass media. And I was assisted in gathering subject-related information by my professors, acquaintances, and numerous websites.

## **1.7 Limitation of the Study**

This study also has several significant shortcomings. Moreover, restrictions limited the breadth of the investigation. The time constraint is the primary limitation of the research investigation. There isn't enough time in the day for research. Because I had never conducted a previous study on this issue, there was no definitive criterion for my study. There is another another significant weakness of our study.

## **1.8 Expected Outcome**

There is no evidence that the death sentence will reduce crime or murder. The maximum fine is not a solution since it is dependent on other circumstances. Crime will diminish if individuals are educated and adjust their conduct, and their state rights are safeguarded. Maximum penalty is not a solution; it is mostly determined by other considerations. Crime will diminish if individuals are educated and adjust their conduct, and their state rights are safeguarded.

The death penalty has been abolished in the vast majority of countries throughout the world. Therefore, the death sentence in Bangladesh is unnecessary. Because I believe the death penalty is an excellent punishment as the ultimate punishment for crime. Individuals avoid crime because they are afraid of the death sentence. The death penalty has been around for a long time, yet it does have the potential to curb crime. Abolishing the death penalty would neither violate people's right to life or cause them to regret their actions after years in jail.



# Chapter 2

## DEFINITION AND HISTORICAL BACKGROUND OF DEATH PENALTY

The death penalty is without a doubt the most contentious issue among contemporary criminologists. Its utility has been called into doubt. A succession of legal judgements and lengthy arguments on this complicated phonological issue are gradually addressing the issue. The death sentence, in essence, contradicts two provisions of the Universal Declaration of Human Rights: the right to life and the right not to be persecuted. The death sentence violates a person's right to life and prevents them from making apologies for their actions. Mere exemplary punishment is unsuccessful in deterring serious offenses and does not eradicate crime. It is not ethical to kill the life of another person without first taking one's own life and then taking one's own life. No proof exists that the death sentence lowers crime or murder. Maximum punishment is not a solution; this is determined mostly by other factors. Crime will be reduced if people are educated and modify their behavior, and their civil rights are safeguarded. Most countries throughout the world have abolished the death penalty. Judges are sympathetic in the courtroom, but no one pretends that all justice is equal. As a result, while excellent administration is essential for minimizing crime, it is not without problems. As a result, the only option is severe punishment. Countries have eliminated the death penalty, and crime has decreased.

### 2.1 Punishment

"Punishment" is defined as "the sanctioned imposition of loss of liberty or privacy or other things to which a person is ordinarily entitled, or the imposition of a specific burden because the individual has been convicted of some criminal offense" by the Stanford Encyclopedia of Philosophy. Typically (though not usually), innocent people are harmed."

The most typical applications in our lives are in legal and regulatory settings, such as a restriction imposed by an authority such as an educator for breaching a law or order that causes a person to suffer or be injured. Employer or manager, governmental or private official. In Bangladesh, the death sentence is the most severe punishment for a variety of offenses. The death penalty is provided for under the following Criminal Code sections: 121, 132, 194, 302,

303, 305, 306, 326 (a), 364 (a), and 398.10. Bangladesh is an Asian country with the Pacific region's worst death punishment. The Spy Revolt occurred in 1857. In order to quell revolt, the Criminal Code was enacted in 1860. Laws designed to quell insurrection remain in effect. Several countries have opted to abolish the death penalty as the ultimate penalty for crime. I believe that the death penalty should be abolished in Bangladesh as well. Because I feel that the death penalty is an excellent final punishment for a crime<sup>3</sup>.

## **2.2 Capital Punishment**

Capital is derived from the Latin word meaning "head," capital. Decapitation is possibly the most widespread means of transmission in human history. Electrocuting, poison gas, hanging, and death by firing squad are all legal methods of execution in the United States. Due to their perceived inhumanity, the chosen procedure has been lethal injection.

Capital punishment is the lawful execution of a person as punishment for a crime. A capital crime, often known as a capital offense, is a felony punishable by death.<sup>4</sup>

## **2.3 Abolish the Death Penalty**

The death sentence infringes on a person's right to life. That is the most inhumane and humiliating punishment imaginable. Like torture, capital punishment includes a deliberate attack on a prisoner. It is discriminatory and frequently used against the poor, helpless, and disadvantaged, with the goal of overthrowing authoritarian governments. There are no alternatives to the death penalty. International human rights treaties forbid courts from carrying out or imposing the death penalty on anybody who was under the age of 18 at the time of the offence. Yet, a small number of nations continue to execute minor offenders and breach their international legal duties. This blog recounts the amnesty movement prior to the abolition of the death sentence. "Extremely cruel and unusual punishment" death. The death sentence is disproportionately applied to the poor, those who cannot afford expensive legal representation, and those of color, ethnicity, and religion. Death punishment is applied arbitrarily and inconsistently. The state executed and brutally killed innocent persons who were falsely convicted. In my perspective, a rehabilitated criminal can make a morally valuable contribution

to our society. Taking a human life is ethically reprehensible under any circumstances. Because digital life is not life, certain religious organizations, including the Roman Catholic Church, reject the death sentence. As a result of a miscarriage of justice, the death penalty is definitive and irreversible. Our society's most horrific punishment is the death penalty. The death penalty is not legally enforceable. Murderers for hire face the criminal justice system regardless of consequence. As a result, it serves no logical function. The death penalty sends a terrible message to society that it is occasionally appropriate in our culture to execute individuals in certain circumstances. People's dread of the death penalty has never discouraged crime. The majority of historical executions were public and horrific. As we can see, several crooks were progressively crushed by the tremendous weight. There was more crime back then than there is now. According to research, the death sentence is not a deterrence to the death penalty. Capital punishment may be used to exact vengeance. Legal retribution strengthens community cooperation against lawbreakers and provides victims with an alternative to personal revenge. You can't bring him back because he's already gone. When a criminal feels that "fear of death" would keep them from killing, they are incorrect. Most murders are done in "hot of passion," when a person is unable to think properly. The death penalty is a basic violation of human rights. It is irrevocable and should be avoided in order to avoid judicial killing. As a result, the death sentence constitutes murder, therefore all murders are wrong.<sup>5</sup>

#### **2.4 Nature and Scope of Death Penalty**

The death penalty is provided for under criminal law. As a result, any offense is punished by death. There is no doubt that the criminal justice system is flawed, and vengeance via the death penalty is critical to maintaining our national discussion, regardless of one's stance on the matter. Additionally, criminal and penal laws express our moral and institutional ideals and attempts to manage individuals. We are either not paying attention or prefer not to mention how it affects us in the same manner. It is not difficult to grasp why our politics is basically rights-based, and why many of our constitutional system's conceptual roots are built on early modern political ideas that claim that we did not create our own rights. We sometimes forget that the political community must hold individuals liable for upholding a civil social order capable of avoiding certain socially destructive actions accountable. Notwithstanding the promise of modern political science, our constitutional framework has not neglected conventional wisdom or the truth that tragedy

happens in all aspects of political life. Humans are frail, flawed, and occasionally detrimental to the environment.

It was a notion maintained by the founding generation as they attempted to strike a balance between freedom and expressing power. Madison stated in *The Federalist* that if all men were angels, there would be no need for government. To maintain tolerable and reasonable control over the people, the government must inflict harsh penalties, including the death sentence, on individuals who commit significant crimes against the political community. Following the passage of the bill by Congress, multiple presidents signed legislation imposing the death sentence for certain heinous offenses. The attorney general contends that the United States cannot seek a death sentence order in a federal civil trial until the Justice Department conducts an internal investigation into possible capital cases.<sup>6</sup>

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<sup>3</sup> (Available at: <http://www.answers.com/topic/capital-punishment>,

<sup>4</sup> (Available at: [http://en.wikipedia.org/wiki/Capital\\_punishment](http://en.wikipedia.org/wiki/Capital_punishment),

<sup>5</sup> (Available at: [http://www.amnesty.ca/blog2.php?blog=abolish\\_death\\_penalty&category=173](http://www.amnesty.ca/blog2.php?blog=abolish_death_penalty&category=173),

<sup>6</sup> (Available at: [http://en.wikipedia.org/wiki/Capital\\_punishment](http://en.wikipedia.org/wiki/Capital_punishment),

## **2.5 Historical Background of Death Penalty**

Almost all governments utilized the death penalty to punish criminals and dissidents during the start of human civilisation on Earth. There was frequently no viable alternative to deterrence and the formation of criminal incapacity until the eighteenth century.

Torture was used in the execution process prior to the discovery of modern medicine. Breaking wheels, keel holing, sawing, hanging, drawing and quartering, impaling, flaring, slow slicing, boiling alive, and impalement, mozzarella, blowing from cannons, exhibition den trunks, and escapism are some instances. The Bleeding Eagle and the Courageous Bull are two such acts mentioned solely in folklore.

Since the dawn of written history, formal capital punishment has been in use. Most historical reports of the time, as well as different old tribal practices, suggest that their judicial system contained the death penalty. In addition, communal repercussions for infractions sometimes included veneration of the offender's blood, corporal punishment, rejection, excommunication, and lethal punishment. In contrast, avoidance and punishment were frequently seen as appropriate means of justice in prehistoric societies. Additionally, government pardons, reparations, blood feuds, and tribal battles were utilized in retaliation to crimes perpetrated by neighboring tribes, clans, or towns.

Blood feuds or feuds emerge when an arbitration mechanism between families or tribes fails or does not exist. Prior to the establishment of the arbitration system, justice was based on the state or organized religion. This is due to criminal behavior, property conflicts, or honor codes. Retaliatory actions indicate the strength of the social collective to protect itself and serve as a message to opponents that damage to property, rights, or persons will not go unpunished.

The death sentence is still used in most nations only for murder, terrorism, war crimes, espionage, treason, or military service. Rape, adultery, fornication, adultery, sex, and cruelty, as well as religious crimes such as Hu Dud, Zima, and visa offenses such as blasphemy, mocha revolt, herbalism, fas advertising, primarily for e-filers, and witchcraft. Many countries have the death sentence. While the death penalty is used in many nations, both drug trafficking and

routine drug possession are considered severe offenses. In many nations, sex crimes such as rape, adultery, and incest, as well as religious offenses such as apostasy (the official abandoning of one's faith), are punished by death. Drug trafficking is also a crime in many poor nations. In China, the death sentence is frequently utilized to punish significant crimes such as corruption and human trafficking. Courts-martial across the world have inflicted the death penalty for offenses like as cowardice, desertion, insubordination, and mutiny.

The majority of historical reports and ancient tribal practices indicate that death punishment was an element of their judicial system. In 621 BC, when Draco first described the Athenian legal system, a very wide range of offences were punished by death. Murder and many other offenses are punished by death according to the Bible. Prior to the development of the current prison system, death punishment was a popular form of punishment throughout modern and medieval Europe. For example, in the 1700s, 222 offenses were punishable by death, such as stealing an animal or down a tree.

Despite the fact that many individuals are executed in China every year, the death penalty was fully abolished in Tang Dynasty China.. Yet, just 24 and 58 executions were carried out in 730 and 736, demonstrating that capital punishment was not utilized frequently. Ling chi, often known as death by a thousand cuts or slow slicing, was a manner of punishment employed in China from roughly 900 CE until it was prohibited in 1905. Put yourself in danger of being convicted and sentenced to death.

Throughout the last few centuries, modern nation-states began to emerge. Citizenship is nearly fundamental to the notion of a nation-state. As a result, throughout Europe, the notion of natural rights evolved, and justice became more closely connected with equality and universality. Another key challenge is the construction of a permanent jail system and a police force.

The death sentence has lost its usefulness as a deterrence to minor offenses such as stealing. Furthermore, the tendency of courts to acquit nonviolent offenders intimidates law enforcement authorities in nations such as the United Kingdom. The twentieth century was one of the deadliest in human history. Many people have died as a result of nation-state warfare. Enemy

combatants were executed in large part by summary executions. Furthermore, modern military groupings employed the death sentence to enforce military discipline. Cowardice, absence without authority, desertion, insubordination, stealing, shirking under enemy fire, and disregarding commands were all capital offenses in the past.

In early New England, public executions were a terrible spectacle that drew enormous crowds who heard an evangelical message and speeches from local preachers and politicians. On December 11, 1803, one of these public executions was recorded by *The Connecticut Courant*, which remarked that "the whole gathering was handled with great order and ceremony, so much so that an attentive gentleman was familiar with other nations. As a result, one may argue that such a dignified and serious gathering could only have occurred in New England."

Throughout much of the world, there has been a shift toward less painful or more humanitarian ways of execution. As a result, France devised the guillotine in the late 18th century, while Britain prohibited drawing and quartering in the early 19th century.

The practice of "hanging," which led in death by asphyxia when the victim was suspended off a ladder or behind a moving cart, has been supplanted by "hanging," in which the victim is flung farther, breaking their neck and cutting their spinal cords. In the United States, lethal injection has generally supplanted the electric chair and gas chamber as more humane means to execution, despite both being considered as excessively brutal.

Slow hanging techniques, blade beheadings, and even stones are still utilized by some races, but the last is rarely used. While it was proposed in 1995 and frequently mentioned in internet discussions, execution by nitrogen asphyxiation was not carried out until 2008.<sup>7</sup>

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<sup>7</sup>(Available at: <http://en.academic.ru/dic.nsf/enwiki/3235>,

## Chapter 3

### NATIONAL AND INTERNATIONAL LAWS ON DEATH PENALTY

Although Bangladesh's laws and legal system have largely diverged from Western norms since 1947 due to socio-cultural and religious variations, Bangladesh's legal system still largely adheres to the English legal system. Although family rules like marriage and inheritance are founded on religion scriptures and hence vary throughout religious communities, laws are loosely based on English common law.

The Bangladeshi constitution was written in 1972 and has undergone 15 revisions. The Bangladeshi Constitution of 1972 upholds the right to life and equality before the law. Everyone in Bangladesh has the right to life, liberty, and personal security, according to Article 32 of the constitution.

#### 3.1 Death Penalties in Different Countries

##### 3.1.1 Bangladesh

Since ancient times, Bangladesh has used the death penalty as a form of capital punishment. When we started exercising, it wasn't sure. Islam holds that the first two brothers, Habil and Kabil, were responsible for the first human killings. And now, if a human murders a man, we kill that person. The Penal Code mentions the death sentence for killing any person as well as the death punishment for dacoits with assault.<sup>8</sup> And it's because of this that we frequently witness numerous executions under our system of capital punishment.<sup>9</sup> Ershad Shikder, a dangerous criminal, also received the death punishment, and we are now ecstatic about it. Additionally, Bangladesh has no current or future plans to eliminate death.<sup>10</sup> Every person in Bangladesh has the right to life, liberty, and personal security, according to Article 32 of the country's constitution. 10 sections of the Penal Code—121, 132, 194, 302, 303, 305, 306, 326(a), 364(a), and 398—contain provisions for the death penalty. The ICCPR explicitly specifies in Article 6(2) that only the "most serious crimes" may be punished with the death penalty in member nations. A combined research by the Bangladesh Legal Aid and Services Trust (BLAST) and the Law Department of Dhaka University found that 53% of individuals who received the death penalty were low-wage workers or unemployed, and 72% were poor or vulnerable economically. In



addition, many of the study's participants who had received death sentences had poor levels of education; the majority (87%) had no degrees above the secondary level, and 15% had no formal education at all. 74% of the convicts had no recorded delinquent records, and none of the detainees had any prior convictions.

### **3.1.2 United Kingdom**

If it were to be reinstated, there are very significant human rights issues that will have an impact on all of us. Will the government enact laws that are fair, have enough protections, and be adequately implemented by the judiciary? We must all decide whether we and our loved ones are more likely to be murdered or to be put to death for murder because we are all capable of committing murder (many domestic killings, in which one partner kills the other during an argument, are first-time offenses). The likelihood of innocent individuals being put to death must also be taken into account because it is inescapable that it will occur sooner or later. Can the police, courts, and system as a whole be trusted to handle situations correctly every time? They have never before been able to. In capital trials, will jurors be willing to find a defendant guilty? Would you want to decide whether the defendant in the dock should be allowed to live or die? Will the government actually execute those who have been sentenced to death, or will it find every justification not to, bringing about the atrocities of former eras? Will executions really prove to be the deterrent that the supporters of capital punishment expect them to be. This is a very important point as it is always put forward by the pro-capital punishment lobby as the principal benefit from re-introduction. Given that the worst killers are frequently psychopaths or have sanity issues that prevent them from acting rationally, it is unlikely that they would be deterred (often taking their own lives immediately after the crime, as in the Hungerford and Dunblane massacres) Some criminals, such as drug smugglers, may be deterred because they have

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<sup>8</sup> Section 292, The Penal Code, 1860.

<sup>9</sup> Ibid, section 302

<sup>10</sup>(Available at: <http://www.articlesbase.com/national-state-local-articles/death-penalty-and-its-position-in-india-540814>).

a clear alternative with defined consequences, but would someone who is in a heated dispute with their partner think twice before picking up the carving knife in the heat of the moment? As a result, a modern-day Ruth Ellis might also be executed because she was insane, as opposed to Beverley Allitt, who killed four children and was one of the criminals that society would like to see stopped, such as serial killers, multiple rapists, and drug lords. However, these particular offenders are the least likely to be put to death; serial killers will be declared insane, and drug lords will go to any means, including intimidating witnesses, to avoid being proven guilty. Thus, we return to the predicament where only "sane" murderers are put to death. She and some psychiatrists claim she has Munchausen's syndrome by proxy, thus it is improbable that a few executions a year will have any genuine deterrent impact, especially on the persons who children, who would be released after being sentenced to death. <sup>11</sup>

### **3.1.3 United States Of America**

More than any other nation, Britain had an impact on American employment of the death sentence. The death penalty was a custom brought to the new globe by European settlers. Captain George Kendall was put to death for the first time in the new colonies in 1608 at the Jamestown colony of Virginia. Kendall was put to death for serving as a Spanish spy. The Divine, Moral and Martial Laws, adopted by Virginia Governor Sir Thomas Dale in 1612, imposed the death penalty for even minor acts as stealing grapes, murdering poultry, and trading with Native Americans.

The death penalty was subject to different laws in each colony. The New England Capital Laws did not take effect until years after the Massachusetts Bay Colony carried out its first execution. The Duke's Laws of 1665 were implemented in the New York Colony. These laws carried the death penalty for crimes including hitting one's parents or doubting the existence of the "real God." (Randa, 1997).<sup>12</sup>

### **3.2 When Did Countries Begin to Abolish the Death Penalty?**

The death penalty was frequently used in antiquity all around the world. The writings of Montesquieu and Voltaire in the 18th century served as the foundation for the modern effort to

abolish the death penalty. The first nations to do away with the death penalty were San Marino (1865), Costa Rica, and Venezuela (1863). (1877). Today, the death sentence has been abolished by law or practice in more than half of the world's nations. Chile, Yugoslavia, Serbia, Montenegro, and Turkey have all joined the list of nations that oppose slavery since the year 2000. China, Iran, Saudi Arabia, and the United States are the countries where executions take place the most frequently. It was banned in France in 1981 and in Great Britain in 1971 (with the exception of treason). It was ceased in Canada in 1976. In a formal resolution adopted in 1977, the United Nations General Assembly stated that it is preferable to "gradually reduce the number of transgressions for which the death sentence may be inflicted, with a view to the desirability of abolishing this punishment." Nothing suggests that the death sentence will make crime and murder less common. It largely relies on other conditions, thus the highest penalty is not a fix. Crime will go down if people can be persuaded to change their conduct, their state rights can be upheld. It largely relies on other conditions, thus the highest penalty is not a fix. Crimes will go down if people can be persuaded to change their conduct, their state rights can be upheld. The death penalty has been abolished in the majority of nations worldwide. In Bangladesh, there is no need to continue using the death penalty. Because I believe that the death penalty is a severe punishment and should only be used as a last resort. People don't avoid crime out of concern for the death penalty. Although it has been around for a while, the death penalty does not work to lower crime. The removal of the death penalty won't infringe on people's right to life, and those who have committed crimes and spent years in prison will repent of them.<sup>13</sup>

### **3.3 Early Death Penalty Laws**

The Code of King Hammurabi of Babylon, which regulated the death penalty for 25 separate offenses, dates back to the Eighteenth Century B.C., making it one of the earliest established death penalty laws. The death penalty was also a feature of the Hittite Code from the fourteenth century B.C., the Draconian Code of Athens from the seventh century B.C., which made death the only punishment for all crimes, and the Twelve Tables of Roman law from the fifth century B.C. Executions of death sentences often involved crucifixion, drowning, beating to death, burning alive, or impalement.

In Britain, hanging became the preferred mode of execution by the tenth century A.D. William the Conqueror forbade hanging or other forms of execution for any crime throughout the century that followed, with the exception of times of war. This pattern would not endure, since it is claimed that as many as 72,000 people were put to death under Henry VIII's rule in the sixteenth century. Boiling, burning at the stake, hanging, beheading, and drawing and quartering were some typical ways of execution during the time. Executions were carried out for serious crimes like treason, marrying a Jew, and refusing to confess to a crime.

Throughout the following two centuries, Britain saw an increase in the number of capital offenses. In Britain by the 1700s, there were 222 offenses that may result in death, such as stealing, felling a tree, and robbing a rabbit warren. Many jurors would not find defendants guilty if the crime was not significant because of the severity of the death penalty. This results in changes to the death penalty in Britain. Over 100 of the 222 offenses that may result in the death penalty were absolved of the death penalty between 1823 and 1837.

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<sup>11</sup>Ibid

<sup>12</sup>Ibid

<sup>13</sup>(Available at: <http://www.newsbatch.com/deathpenalty>.)

### **3.4 Death Penalty under the Bangladesh Penal Code, 1860**

It would be appropriate to make reference to the pertinent section of the Penal Code (1898), which provides for the death penalty for a number of specific crimes. <sup>14</sup> these are the offenses:

- Waging war against the Government (Section 121)
- Abetment of mutiny (Section 132)
- Giving or fabricating false evidence leading to procure one's conviction for capital offence (Section 194)
- Murder (Section 302)
- Abetment of suicide by child or insane person (Section 305)
- Attempt to murder by a life convict, if hurt is caused (Section 307)
- Dacoity with Murder (Section 396)
- Kidnapping for ransom (Section 364A)

According to the Code of Criminal Procedure from 1898, a death sentence imposed by a session judge may only be carried out after being upheld by the High Court.

### **3.5 Constitutional Prohibition of Death penalty (other country)**

With the passage of the twenty-first amendment to the Irish constitution in 2001, the Republic of Ireland became one of the first nations in the world to constitutionally impose the death penalty.

In its Basic Law from 1949, the Federal Republic of Germany outlawed the death sentence. The death penalty was abolished in Costa Rica in 1877, and the 1949 constitution declares that "Human life is inviolable." Additionally, "No one will be subjected to cruel, inhuman, or degrading treatment or to the penalty of life imprisonment or confiscation." This implies that the death sentence is likewise outlawed.

Following the Revolution, the death sentence was abolished in Czechoslovakia (now divided into the Czech Republic and Slovakia) and its application was outlawed in the constitution in 1991. (by adoption of the Charter of Fundamental Rights and Freedoms). See the Czech Republic's Constitution and the Czechoslovak Constitution from 1960.

In conclusion, Ireland is far from the first nation to forbid the death sentence in its constitution. According to Amnesty International, 38 nations have death penalty bans in their constitutions as of 1999.

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<sup>14</sup> The penal code 1860.

# CHAPTER 4

## A COMPARATIVE STUDY OF DEATH PENALTY

Human rights are violated by the position of the death penalty. The death penalty has been abolished in the majority of nations worldwide as a result. However, Bangladesh does not adhere to international law as it currently stands because it has a variety of laws that pertain to the death sentence

### 4.1 Death penalty in perspective of Bangladesh

In Bangladesh, the execution of a murderer or a convict of a serious crime has been the standard form of capital punishment from ancient times. When we started exercising, it wasn't sure. Although death penalty convictions are often handed down by judges, executions of those convictions are less common. In Bangladesh, very few prisoners are put to death each year. The national government has been known to free prisoners by bringing up political issues. Islam holds that the first two brothers, Habil and Kabil, were responsible for the first human killings. And now, if a person kills a man, we put him to death. Our Penal Code allows the death penalty for thieves who assault their victims and also mentions the death penalty for killing anyone, therefore it is common to see many individuals die as a result of the death sentence. ErshadShikder was a dangerous criminal who received the death punishment as well, and we are now quite delighted about it. Additionally, Bangladesh does not currently have any plans to remove the death sentence from our legal law in the future. Two rights guaranteed by the Universal Declaration of Human Rights are specifically violated by the death sentence. The death sentence violates a person's right to life, and those who receive it are not given the chance to atone for their misdeeds. Only crime cannot be eliminated by simple exemplary punishment, and significant crime prevention is not desirable. It is wrong to take someone else's life first, then take one's own life in place of one's own. Nothing suggests that the death sentence will make crime and murder less common. It largely relies on other conditions, thus the highest penalty is not a fix. Crime will go down if people can be persuaded to change their behavior, their state

rights can be upheld. The death penalty has been abolished in the majority of nations worldwide. When it comes to justice, judges are compassionate, but no one is claiming that all justice is right. Additionally, reducing crime requires effective government, albeit there are still issues in this area. There is therefore no choice but to punish severely. The nations with the harshest penalties have lower crime rates and stronger legal systems. But just as it is weak in Bangladesh, so too is the propensity for criminal activity and legal proceedings. Even with such harsh penalty, the example that would be set is not occurring. The death sentence is the harshest penalty available in Bangladesh for a range of crimes. 10 sections of the Penal Code—121, 132, 194, 302, 303, 305, 306, 326(a), 364(a), and 398—contain provisions for the death penalty.<sup>15</sup> 10 One of the nations in Asia and the Pacific with the highest number of executions is Bangladesh. 1857 saw the Sepoy Rebellion. In 1860, the Penal Code was passed as a measure to put an end to the uprising.<sup>16</sup> The legislation put in place to put an end to the uprising is still in effect. The death penalty has been eliminated as the ultimate penalty for crime in several nations around the world. The death penalty should not be kept in place in Bangladesh, either, in my opinion. Considering that I believe the death sentence to be the most severe crime is a big punishment.<sup>17</sup>

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<sup>15</sup> Section 292, The Penal Code, 1860.

<sup>16</sup> Ibid, Section 302

<sup>17</sup> (<http://www.thedailystar.net/law/200308/02/index>).



## **4.2 Death Sentence International Trend and Bangladesh**

The use of the death penalty is the most prominent form of punishment in the criminal justice system. This is due to the fact that the death sentence is a punishment that extinguishes the light of life, steals the world's ambitions and aspirations, and robs the innocent children of their father's compassion, love, and care. This is a severe, inhumane, and degrading punishment that represents our earliest tendencies to punish offenders. No individual should be subjected to cruel, inhuman, or humiliating punishment or treatment, according to Article 35(5) of the People's Republic of Bangladesh Constitution.

247 convicted criminals have been hanged to death since Bangladesh was freed. There are currently at least 1500 criminals on death row. 28 women are among the more than 350 prisoners in the condemned cell waiting for their final day of life. More than 500 prisoners are among those who have fled. The purpose of this article is to examine whether the death sentence advances justice. Let's first take a look at how the criminal justice system will end.<sup>18</sup>

### **4.2.1 End of Criminal Justice**

Criminal justice exists to hold the perpetrator accountable. The state punishes him. What is the point of punishment, or otherwise, how does criminal justice conclude? Many theories about the intent of punishment have been put forth since very early times.<sup>19</sup>

### **4.2.2 Survey on Death Penalty**

The death sentence is legal in Bangladesh under numerous criminal statutes. Bangladesh's Criminal Law specifies the death sentence for 33 offenses. If an accused is found guilty of the felony by the appropriate court, the maximum penalty is the death penalty. Every year, a considerable number of criminals are condemned to death in lesser courts. Convicts sentenced to death are held in solitary confinement for long periods of time. Many of them grow emotionally and physically unwell as a result of the constant threat of death. Some of the accused are tortured and coerced to confess while in police custody, and the courts give the highest sentence based on such confessions. The number of people on death row. According to Adhikar's record, 411 persons were condemned to death in lower courts between January 2021 and March 2022, with seven of those guilty sentenced to death in prison. Yet, because authorities do not offer clear and precise information, it is impossible to determine which persons were killed for which offenses. Documentation, however, demonstrates that the majority of these death sentences were handed down for murder, and in some cases for rape, drug smuggling, and robbery.

In March 2022, a panel of the Bangladesh Supreme Court's High Court Division heard death referrals and appeals from inmates condemned to death in 2015 and 2016. Death reference cases and appeals from convicts condemned to death in lower courts this year are anticipated to be handled in 2027-2028. As a result, the death row prisoner must languish in a condemned cell for years until the issue is resolved in the Supreme Court's High Court Division and if the High Court Division upholds it.

A death sentence compels the accused to remain in the condemned cell for around 10 to 15 years until the matter is finally resolved in the Appellate Division. According to the Supreme Court, in the previous seven years, 969 death referrals have been heard in the High Court. Just 162 of these cases have been resolved. There are 843 cases awaiting a hearing. There are 2,213 death row convicts in 68 different institutions around the country.<sup>20</sup>

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<sup>19</sup>The Constitution of Bangladesh.

<sup>20</sup>

### 4.2.3 Comparative Study

In the current society, punishment is less common than reformation for criminals. The rationale is because modern criminology and criminology treats criminals as sick, abnormal people who can be made into decent citizens by government-provided education and reform.

The deterrent approach has allegedly been shown to be unsuccessful at reducing crime. To combat the global rise in crime, the Penal Code has been amended to include harsh sentencing provisions. By making the general public sympathetic to people who are subjected to cruel punishment, excessive harshness of punishment frequently serves to undermine its own intended outcome. Instead of instilling in him a dread of the law, deterrent punishment is more likely to harden the. Criminals with a tough exterior do not fear punishment. Once the offender receives punishment, the punishment loses its horror. Retributive theory has additionally come under fire as a cruel and inhumane type of punishment. Wild justice is revenge. It only makes the situation worse. In some situations, preventive punishment—such as the suspension of a driver's license or termination of employment may be beneficial, but inflicting tremendous pain in the name of prevention ultimately just serves to harden criminals. Once more, the implementation of reformatory theory could result in a rise in crime. Prisons must be made into nice homes if offenders are to be placed there for the purpose of becoming decent citizens via physical, intellectual, and moral upbringing. There are many incorrigible criminals who are immune to reformatory forces and for whom crime is an instinct rather than a bad habit. These criminals must be abandoned in their desperation. It is true that most criminals are not regular people. However, if all offenders are given lenient treatment, even common, reasonable people can be persuaded to commit crimes due to the lack of harsh punishment. Therefore, the ideal system of criminal justice cannot be founded on any one theory of punishment. Every theory has benefits of its own, and it is important to consider all of them. Punishment's deterrence component must not be disregarded. The reformatory component must also be given its proper respect. The offender's personality is just as significant as his acts, and we shouldn't separate the two. The wrongdoer is more than just a criminal deserving of punishment. He must also be treated as a patient. The juvenile offenders should receive special care. It must be remembered that youngsters typically commit crimes without having a motivation. They break the law on a minor level because of their nasty neighbors and lousy company. Their situations require creativity and

compassion. The judge should consider the offender's personality, age, early upbringing, education, surroundings, the circumstances of the offense, the object used in the offense, and other criteria before deciding on a sentence.<sup>21</sup>

A global conference on the death penalty was held in the Swedish capital in 1977. Since that time, protests against such a harsh penalty have gained momentum on a global scale. The numerous organizations are fighting the death penalty all across the world. Amnesty International and the European Union are the principal organizations. Under the sponsorship of the EU, the World Coalition Against the Death Penalty (WCADP) was established in Rome, Italy, in 2002. Since 2003, this coalition has observed October 10 as the day against the death penalty.<sup>22</sup>

The Special Power Act of 1974 established the death sentence as a punishment for certain crimes, including sabotage, counterfeiting government stamps and currency, smuggling, and adulterating or selling food, drink, pharmaceuticals, or cosmetics.

The 2000 law "Nari-o-ShishuNirjaton Daman Ain" includes death as a punishment for crimes involving combustible and likely other substances, women's and children's trafficking, as well as crimes involving ransom, ravishing any woman or child who dies as a result, causing death for dowry, and maiming or mutilating children for begging.

The death sentence is routinely applied by Bangladeshi courts and tribunals in accordance with various laws. Many convicts received death sentences during the four-party alliance's leadership, particularly after the establishment of the surveillance Cell. In the past seven years, about 30 death sentences had been carried out. The question that now arises is: Does the death penalty work as a deterrent?<sup>23</sup>

Many people in our country rely on a single adult's salary for support despite the fact that he committed crimes in a fit of rage and on the spur of the moment. Is it not unfair to them not to take any action to ensure their upkeep and a healthy environment, both of which are necessary for their development as moral citizens of the country? No child may be deprived of their father's love and devotion by the state. In the name of reducing crime, the state cannot commit injustice. Citizens will be guaranteed equality and justice, according to a vow made in the preamble of the public constitutions. The liberation heroes had committed their life to constructing a welfare state

that would ensure basic human rights and freedoms as well as respect for human dignity and value. According to the Constitution, the right to be protected against cruel, inhumane, and degrading treatment is a fundamental one. So it's time to reevaluate the death penalty as a form of punishment. In the name of reducing crime, the state cannot commit injustice. Citizens will be guaranteed equality and justice, according to a vow made in the preamble of the public constitutions. The liberation heroes had committed their life to constructing a welfare state that would ensure basic human rights and freedoms as well as respect for human dignity and value. According to the Constitution, the right to be protected against cruel, inhumane, and degrading treatment is a fundamental one. So, it's time to reevaluate the death penalty as a form of punishment.<sup>24</sup>

#### **4.3 Is It Effective Against Murderers?**

According to the experience of many experts, the fact that the death penalty is the ultimate punishment does not necessarily mean that it has special effects against drug traffic. In fact, in some circumstances, it may complicate the work of the Public Prosecution because law courts require much higher standards of evidence if the death penalty is provided (particularly if it is mandatory). The likelihood of being found and arrested is undoubtedly the best deterrent.

For its part, the Vienna-based International Conference on Drug Addiction and Traffic in 1987 developed a multidisciplinary plan for future operations to combat drug abuse, including measures for prevention and repression.

There is a rigorous cap as well. An intelligent criminal may choose to commit the crime even if he is aware of the risk involved in the belief that he won't be caught. The majority of criminologists concur that the best way to dissuade murderers is to increase the likelihood of solving the crime and prosecuting the criminal rather than toughening up punishment.

The intended effect of the death penalty can occasionally be reversed. Those who know they may be sentenced to death may be encouraged to kill the witnesses to their crime or anyone who might be able to identify and incriminate them.

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The intended effect of the death penalty can occasionally be reversed. Those who know they may be sentenced to death may be encouraged to kill the witnesses to their crime or anyone who might be able to identify and incriminate them.

The death sentence is the ultimate punishment, but this does not necessarily indicate that it has unique benefits against drug traffic, according to the experience of numerous specialists. In other cases, the Public Prosecution's job may even become more difficult if the death sentence is applied because the legal system demands for higher standards of proof (particularly if it is mandatory). The most effective deterrent is unquestionably the possibility of being discovered and arrested.

The Vienna-based International Conference on Drug Addiction and Traffic, on the other hand, created a multidisciplinary strategy for future operations to combat drug misuse in 1987, including preventative and repressive measures.

#### **4.4 Case Study Regarding Death Penalty**

##### **Mohibur Rahman vs state 69 DLR (AD) 333**

**Fact:** The fact of the case is that, on the fateful evening victim Montaj Uddin came to Horipur Bazar when the petitioner and another chased him with deadly weapons and at that moment Montaj Uddin had to take shelter in the grocery shop of Bashir Uddin to save his life from the clutches of the accused persons. Shortly afterwards, accused Mohibur Rahman inflicted a dao blow on the waist of Montaj Uddin; Accused Abdul Latif hit a dao aimed at his head but Montaj Uddin resisted with his right hand due to a cut injury on his finger and then Billal Miah inflicted a dagger blow on Montaj Uddin's chest. Hearing the screams of the victim, the locals rushed to the spot to rescue him and the accused persons fled away towards Tamabil Road. Thereafter, the witnesses shifted the victim to the MAG Osmani Medical College Hospital where the attending physician declared him dead.

**Judgment:** Delay is condoned. Prosecution in support of its case has examined 16 witnesses. The delay was waived. The petitioners were absconding beyond the trial period in their absence. In a judgment and order dated 20th March, 2005, the learned Sessions Judge convicted them under Section 302/34 of the Penal Code and sentenced them to death subject to confirmation by the High Court Division. The petitioners then applied for a delay of 895 days. Although the

explanation of the delay given in the application is not satisfactory and the conduct of the petitioner does not require any sympathetic consideration, it still considers the death sentence. On consideration, condoned the delay and the matter of merit has been heard.

In this case, witnesses stated that the petitioners actively participated in commission of murder with deadly weapons and inflicted injuries on the person of the victim. The High Court Division on assessment of their evidence was of the view that these witnesses are natural, neutral and disinterested witnesses, who witnessed the incident. The High Court Division noticed some minor discrepancies in their evidence.

These discrepancies according to the High Court Division are normal errors of memory due to lapse to time or mental disposition, such as, shock and horror at the time of occurrence and the like. The High Court Division also noticed that these petitioners remained in abscondance during the course of the trial and this conduct does not impress it to commute the sentence. We do not approve all the above findings and the observation of the High Court Division but we find no infirmity in the judgement of the High Court Division so far as it relates to the petitioners' participation in the murder and the finding as to their guilt of the charge.

Regarding the punishment, the High Court Division has put a lot of emphasis on the fugitive question of the petitioners. This is not a legal ground to award the extreme sentence. Though section 302 provides a death sentence which is a rule, a sentence of death being the forfeiture of life of a person, the court is always alive to see whether there is any extraneous ground to commute the death sentence to life. Court always keep in mind the nature of the offence perpetrated by the accused persons, the motive of the offender in the commission of the murder, the aggravating circumstances, the enormity of the crime and the mitigating circumstances. In cases where the murder is so cruel or beastly manner or cold blooded planning or gruesome and so on. Capital sentence is the proper one and the court is justified in awarding the death sentence. In this case, the petitioner Mohibur Rahman has inflicted a dao blow on the left side of the waist of Montaj Uddin and the petitioner Abdul Latif inflicted another dao blow causing bone deep injury on the little finger of the right hand.

Doctor Md. Moazzin Hossain Khan (W 14) performed autopsy on the body and found at least four marks of injuries on the victim and speculated that he died of asphyxiation due to lung injuries. The lung injury was inflicted by accused Billal with a dagger. Thus, it is clear that the injuries sustained by the petitioners were not logically responsible for the cause of death and that the deaths were due to injuries caused by Billal. These petitioners participated in the murder commission and were charged with sharing common motives. Considering this aspect of the matter, if the death sentence is passed, each of the applicants is fined Rs 20,000 and sentenced to life imprisonment, by default to six months rigorous imprisonment.

We would like to observe here that the imprisonment for life means a sentence of imprisonment for the whole of the remaining period of the convicted person's natural life subject to such

remissions for good conduct by the authority. Section 57 of the Penal Code is limited in its scope and cannot be held to make life imprisonment equivalent to imprisonment thirty years for all purposes. The petition is accordingly disposed of with the modification of the sentence.

#### **4.5 Is It Effective Against Terrorists?**

The death penalty is frequently cited as a practical and essential tool to combat terrorism. Attacks with dynamite, abductions, assassinations of public officials or politicians, hijackings, and other acts of political violence frequently harm innocent bystanders as well as the intended targets. These incidents cause outrage, and the public is naturally demanding heavy sanctions, even the death penalty. Executions, however, may exacerbate terrorism rather than curtail it, as numerous experts have noted.

A criminology professor at Simon Fraser University in Canada, Professor Ezzat A. Fattah, said: "Those who actually believe that the death sentence would stop terrorist attacks or make them diminish, are naive people or dreamers." Normal sanctions, including the death sentence, don't make terrorists or political offenders afraid because they are driven by ideology and willing to die for their beliefs. Additionally, terrorist actions are risky, and the terrorist encounters numerous dangers every day, so he isn't afraid of dying instantly. How could the possibility of receiving a death sentence deter him? <sup>25</sup>

Many members of the illegal Zionist organization Irgun were given hanging sentences by English authorities that ruled Palestine in the 1940s after they were charged with dynamite attacks and other violent crimes. Former Irgun leader and Israeli Prime Minister Menachem Begin once told a former British governor that his organization had been so "galvanized" by executions that it had sentenced numerous English soldiers to death by hanging as retaliation. Begin believed that their inspiration came from being hanged, which also made them more combat-ready and committed to their mission. Executions for political offenses draw attention to terrorism, pique public interest, and provide terrorist organizations with a platform to broadcast their political stances; nevertheless, they also run the risk of creating "martyrs" whose legacy must be preserved. Additionally, the use of executions to support other I didn't stop any murders with the punishments I carried out.



The prospect of the death penalty has never deterred terrorism or political violence throughout history, according to Robert Badinter, the French Minister of Justice. If there are any people—men or women—who have no fear of the death penalty at all, they are simply terrorists who frequently put their lives in danger while carrying out their missions.

And regarding the execution of two IRA militants, Albert Pierrepoint, the last English executioner, remarked:

They sung fearlessly as they approached the gallows pole on the morning of their execution: "Long live the rebels." They claim that outsiders are unaware of these facts and ask, "If they aren't terrified of death, how can the death penalty be a deterrent?" "I didn't stop any murders with the punishments I carried out.

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<sup>21</sup> Section 25 C, The Special Powers Act, 1974. 18

<sup>22</sup> Section 4, Nari o Shisshu Nirjaton Daman Ain, 2000.

<sup>23</sup> Ibid. Section-12.

<sup>24</sup> Article-35(4), The Constitution of the People's Republic of Bangladesh.

<sup>25</sup> K. O'Shea, "Women and the Death Penalty in the United States, 1900-1998," Praeger 1999.

# Chapter 5

## LIMITING THE DEATH PENALTY

### 5.1 Creation of International Human Rights Doctrines

The Universal Declaration of Human Rights was enacted by the UN General Assembly following World War II. This 1948 treaty declared a "right to life" in an unqualified manner, with any restrictions only being implied. In the years after the Universal Declaration, the United Nations changed its emphasis to reducing the use of the death sentence to safeguard children, pregnant women, and the elderly, realizing that international eradication of the death penalty was not yet a feasible aim.

Subsequent international human rights treaties, such as the American Convention on Human Rights, the European Convention on Human Rights, and the International Covenant on Civil and Political Rights, were written in the 1950s and 1960s. Although the death sentence was specified as an exception that had to be accompanied by stringent procedural protections, these agreements also guaranteed the right to life. Despite this exception, a large number of Western European countries stopped using the death penalty, even if they did not legally abolish it. As a result, by the 1980s, its de facto elimination had become standard in Western Europe.<sup>26</sup>

### 5.2 Limitations within the United States

Despite increasing European abolition, the United States kept the death penalty but set restrictions on it. The death sentence is an illegal punishment for the rape of an adult woman when the victim was not killed, the United States Supreme Court ruled in *Coker v. Georgia* in 1977.<sup>27</sup> In the ensuing ten years, additional death penalty restrictions were added.

### 5.3 Mental Illness and Mental Retardation

In *Ford v. Wainwright*, the Supreme Court mandated an adversarial procedure for evaluating mental capacity and outlawed the execution of insane people. In *Penry v. Lynaugh*, the Supreme Court determined that the Eighth Amendment was not broken when people with mental retardation were put to death. Although a public consensus had developed against the execution

of mentally disabled people, the Court found in *Atkins v. Virginia* in 2002 that such a punishment violates the Eighth Amendment's limitation on cruel and unusual punishment.

#### **5.4 Race**

When the Supreme Court ruled in *Batson v. Kentucky* that a prosecutor is expected to disprove the inference of prejudice by providing impartial justifications for the strikes, race became the central issue of discussion in the criminal justice system.

When the Supreme Court ruled on the *McCleskey v. Kemp* case in 1987, race was once more a key factor. By presenting a statistical analysis demonstrating a pattern of racial discrepancies in death sentences based on the race of the victim, *McCleskey* asserted that there was racial discrimination in the application of Georgia's death penalty. However, the Supreme Court ruled that racial disparities would not be accepted as a "equal protection of the law" constitutional violation.

#### **5.5 Juveniles**

The Supreme Court considered three decisions involving the validity of capital punishment for teenage criminals in the late 1980s. Four Justices ruled in *Thompson v. Oklahoma* in 1988 that it was unlawful to execute criminals who were fifteen years old or younger at the time of their offenses. The fifth vote was Justice O'Connor's concurring opinion, which limited *Thompson* to states having death sentence laws that did not specify a minimum age requirement. No state that does not have a minimum age in its capital penalty legislation may execute a person who was under sixteen at the time of the crime, according to the cumulative effect of the opinions by the four justices and Justice O'Connor in *Thompson*.

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<sup>26</sup> *Ibid* 2

<sup>27</sup> 433 U.S. 584

The Supreme Court ruled the following year that the Eighth Amendment does not forbid the death sentence for offenses committed by people who are sixteen or seventeen years old. Anyone who was under 18 when they committed the crime cannot currently be executed in 19 states that use the death sentence.

The International Covenant on Civil and Political Rights was adopted by the US in 1992. According to Article 6(5) of this international human rights treaty, persons who committed crimes while under the age of 18 are exempt from the death penalty. The United States reserved the right to execute minor offenders while doing so, nevertheless. The only nation that still has a reservation to this Article is the United States. International response has been quite positive.

## CHAPTER 6

### CONCLUSION

#### **Conclusion**

The death sentence is contrary to the tenets of modern rehabilitative techniques to treating offenders, and this should be underlined once more. It doesn't give the offender an opportunity to make a better decision. In addition, because of its irrevocable character, many innocent persons may suffer irreparable harm if they are hanged inadvertently.

In the discussion above, our main objective was to emphasize the useful alternatives to the death penalty. Any punishment must be fair, proportionate, acceptable, and, most importantly, it must be carried out. Society still views murder as a particularly horrible conduct that calls for the harshest punishments. With gradations for less terrible acts, a life term in jail would be suitable for the worst murders.

I have made an effort to defend the moral and legality of the death punishment here. Since I believe it fails to discriminate between truly awful crimes and those that, while still constituting homicide, are considerably more understandable to the rest of us, I personally oppose the mandatory life term for murder. Therefore, it is obviously important to provide juries the option of convicting the prisoner of murder in a lesser degree and to allow judges the authority to impose just penalties depending on the evidence presented in court. Even though it is costly and largely useless, save as a way to keep criminals out of society for a specified amount of time, imprisonment is at least enforceable against anyone who commits murder.

It goes without saying that the death penalty is unconstitutional if it is applied arbitrarily, capriciously, unreasonable, discriminatorily, freakishly, or wantonly, but if it is applied logically, objectively, and prudently, it will increase public faith in the criminal justice system.

Finally, it should be noted that Bangladesh has historically used the death sentence as the ultimate punishment for murder and other serious crimes. Though the sentences are also not common, when we started exercising, nobody knew. In Bangladesh, very few prisoners are put to death each year. The government of the nation has occasionally freed prisoners by bringing up political issues.

Therefore, we hope and anticipate that, like other nations throughout the world, our nation will abolish the death penalty by providing alternative punishment to offenders who commit heinous crimes and protecting human rights.

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