Bangladesh and Capital Punishment; A tool for justice? Or a method to retain the death penalty for exploitation of constitutional, religious and cultural practices?

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CHAPTER ONE

Death Penalty – in Bangladesh Context

1.1 Introduction

Bangladesh is a unitary, independent sovereign Republic to be known as the People’s Republic of Bangladesh\(^1\). About 98% of the inhabitants of Bangladesh are Muslims. The State religion of the Republic is Islam, but other religion may be practiced in peace and harmony in the Republic\(^2\). In Western World Bangladesh is often considered to be a moderate muslim country. This area was under Muslim rule for five and a half centuries and passed under British rule in 1957 AD. During British rule it was a part of the British Indian province of Bengal and Assam. In August 1947, it gained independence from the British rule along with the rest of India and formed a part of Pakistan and was known as East Pakistan. Bangladesh emerged as an independent country on March 26, 1971. The war of liberation ended on 16th December 1971 in victory of Bangladesh and surrender of the Pakistani occupying force.

The legal system of Bangladesh has a long history. Capital punishment or death sentence had always been an integral part of the rule of law of the country. Since the liberation of Bangladesh, 247 convicted criminals have been hanged to death. Not less than 1500 criminals are now death convicts. More than 950 convicts including 28 women are in the condemned cell waiting for the day of last breathing. Others (more than 500 convicts) are in hiding\(^3\).

The ancient law of crimes in India provided death sentence for quite a good number of offences. The great ancient law giver Manu placed the element of fear as an essential attribute of rule of law. According to him, in order to refrain people from sinful murders, death penalty was necessary and in absence of this mode of punishment, state of anarchy will prevail and people will devour each other as the fish do in water, the stronger eating up the weaker. During the medieval period of Moghuls rule in India, the sentence of death revived in its crudest form. At times, the offender was made to dress in the tight robe prepared out of freshly slain buffalo skin and thrown in the scorching sun. The shrinking of the raw-hide eventually, caused death of the offender in agony pain and suffering. Another mode of inflicting death penalty was by nailing the body of the offender on the walls. These modes of

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\(^1\) See-Article-1 of the Constitution of the people’s Republic of Bangladesh, 1972.
\(^2\) Article-2A, ibid;
\(^3\) http://www.afebfry.org, 4/5/2008 and also in the amnesty international and IPDC web site.
putting an offender to death were abolished under the British system of criminal justice administration during early decades of nineteenth century when death by hanging remained the only legalized mode of inflicting death sentence⁴.

1.2 Death Penalty

The death penalty, also referred to as capital punishment, is the execution (killing) of a person by the state as punishment for a crime. Crimes that can result in a death penalty are known as capital crimes or capital offences. The term capital origins from Latin capitalis, literally "regarding the head" (Latin caput). Hence, a capital crime originally was to be punished by the loss of the head.

Capital punishment is the practice of executing someone as punishment for a specific crime after a proper legal trial. It can only be used by a state, so when non-state organisations speak of having 'executed' a person they have actually committed a murder. It is usually only used as a punishment for particularly serious types of murder, but in some countries treason, types of fraud, adultery and rape are capital crimes.

The phrase 'capital punishment' comes from the Latin word ‘capu’ for the head. A 'corporal' punishment, such as flogging, takes its name from the Latin word for the body.

Capital punishment is used in many countries around the world. According to Amnesty International figures as at May 2007, 68 countries and territories retain the death penalty, although many never actually use it. China executes the most people per year overall, with an estimated figure of 1,010 in 2006. Amnesty International also states that in 2006, Iran executed 177 people, Pakistan 82, Iraq and Sudan both at least 65 and that there were 53 executions in the USA.

Based on public reports available, Amnesty International estimated that at least 1,010 people were executed in China during the year [2006], although these figures are only the tip of the iceberg. Credible sources suggest that between 7,500 to 8,000 people were executed in 2006. The official statistics remain a state secret, making monitoring and analysis problematic. Amnesty International, May 2007. In March 2004 a delegate at the National People's Congress said that "nearly 10,000" people are executed per year in China.

( Amnesty International, 2006)

There is now steadily increasing support for abolishing capital punishment. In April 1999, the United Nations Human Rights Commission passed the Resolution Supporting Worldwide Moratorium on Executions. The first World Congress against the death penalty was held in Strasbourg in June 2001. The World Coalition against the Death Penalty was created in Rome in 2002, and 10th October 2006 is World Day against the Death Penalty.

**In 2014, 22 countries around the world carried out executions. A number of 2,466 persons or accused was sentenced to death which is up 28% on 2013. It is found from amnesty international website that upto July 2015, 101 countries abolished death penalty.**

⁴ Kulshrestha’s, V.D, “Landmarks in Indian legal and constitutional History”, edn-7th, Rept.2000,Chapt.1,passim.
1.3 History and Background of Capital Punishment

Historically, the execution of criminals and political opponents was used by nearly all societies—both to punish crime and to suppress political dissent. In most places that practice capital punishment today, the death penalty is reserved as punishment for premeditated murder, espionage, treason, or as part of military justice. In some countries sexual crimes, such as rape, adultery and sodomy, carry the death penalty, as do religious crimes such as apostasy (the formal renunciation of one's religion). In many retentionist countries (countries that use the death penalty), drug trafficking is also a capital offense. In China human trafficking and serious cases of corruption are also punished by the death penalty. In militaries around the world courts-martial have imposed death sentences for offenses such as cowardice, desertion, insubordination, and mutiny.

The use of formal execution extends at least to the beginning of recorded history. Most historical records as well as various primitive tribal practices indicate that the death penalty was a part of their justice system. Communal punishment for wrongdoing generally included compensation by the wrongdoer, corporal punishment, shunning, banishment and execution. However, within a small community, crimes were rare and murder was almost always a crime of passion. Moreover, most would hesitate to inflict death on a member of the community. For this reason, execution and even banishment were extremely rare. Usually, compensation and shunning were enough as a form of justice.

However, these are not effective responses to crimes committed by outsiders. Consequently, even small crimes committed by outsiders were considered to be an assault on the community and were severely punished. The methods varied from beating and enslavement to executions. However, the response to crime committed by neighbouring tribes or communities included formal apology, compensation or blood feuds.

A blood feud or vendetta occurs when arbitration between families or tribes fails or an arbitration system is non-existent. This form of justice was common before the emergence of an arbitration system based on state or organised religion. It may result from crime, land disputes or a code of honour. "Acts of retaliation underscore the ability of the social collective to defend itself and demonstrate to enemies (as well as potential allies) that injury to property, rights, or the person will not go unpunished." However, in practice, it is often difficult to distinguish between a war of vendetta and one of conquest.

For most of recorded history, capital punishments were often cruel and inhuman. Severe historical penalties include breaking wheel, boiling to death, flaying, slow slicing, disembowelment, crucifixion, impalement, crushing (including crushing by elephant), stoning, execution by burning, dismemberment, sawing, decapitation, scaphism, or necklacing.

Elaborations of tribal arbitration of feuds included peace settlements often done in a religious context and compensation system. Compensation was based on the principle of substitution which might include material (e.g. cattle, slave) compensation, exchange of brides or grooms, or payment of the blood debt. Settlement rules could allow for animal blood to replace human
blood, or transfers of property or blood money or in some case an offer of a person for execution. The person offered for execution did not have to be an original perpetrator of the crime because the system was based on tribes, not individuals. Blood feuds could be regulated at meetings, such as the Viking things.\[^{22}\] Systems deriving from blood feuds may survive alongside more advanced legal systems or be given recognition by courts (e.g. trial by combat). One of the more modern refinements of the blood feud is the duel.

In certain parts of the world, nations in the form of ancient republics, monarchies or tribal oligarchies emerged. These nations were often united by common linguistic, religious or family ties. Moreover, expansion of these nations often occurred by conquest of neighbouring tribes or nations. Consequently, various classes of royalty, nobility, various commoners and slave emerged. Accordingly, the systems of tribal arbitration were submerged into a more unified system of justice which formalised the relation between the different "classes" rather than "tribes". The earliest and most famous example is Code of Hammurabi which set the different punishment and compensation according to the different class/group of victims and perpetrators. The Torah (Jewish Law), also known as the Pentateuch (the first five books of the Christian Old Testament), lays down the death penalty for murder, kidnapping, magic, violation of the Sabbath, blasphemy, and a wide range of sexual crimes, although evidence suggests that actual executions were rare.\[^{23}\] A further example comes from Ancient Greece, where the Athenian legal system was first written down by Draco in about 621 BC: the death penalty was applied for a particularly wide range of crimes. The word draconian derives from Draco's laws.

Similarly, in medieval and early modern Europe, before the development of modern prison systems, the death penalty was also used as a generalized form of punishment. For example, in 1700s Britain, there were 222 crimes which were punishable by death, including crimes such as cutting down a tree or stealing an animal. Thanks to the notorious Bloody Code, life in 18th century (and early 19th century) Britain was a hazardous place. For example, Michael Hammond and his sister, Ann, whose ages were given as 7 and 11, were reportedly hanged at King's Lynn on Wednesday, the 28 September 1708 for theft. The local press did not, however, consider the executions of two children newsworthy.

Although many are executed in China each year in the modern age, there was a time in Tang Dynasty China when the death penalty was actually abolished altogether. This was in the year 747, enacted by Emperor Taizong of Tang (r. 712–756), who before was the only person in China with the authority to sentence criminals to execution. Even then capital punishment was relatively infrequent, with only 24 executions in the year 730 and 58 executions in the year 736.\[^{26}\] Two hundred years later there was a form of execution called Ling Chi, slow slicing, or death by/of a thousand cuts, used in China from roughly 900 CE to its abolition in 1905.

Despite its wide use, calls for reform were not unknown. The 12th century Sephardic legal scholar, Moses Maimonides, wrote, "It is better and more satisfactory to acquit a thousand guilty persons than to put a single innocent man to death." He argued that executing an accused criminal on anything less than absolute certainty would lead to a slippery slope of decreasing burdens of proof, until we would be convicting merely "according to the judge's caprice." His concern was maintaining popular respect for law, and he saw errors of commission as much more threatening than errors of omission.
The last several centuries have seen the emergence of modern nation-states. Almost fundamental to the concept of nation state is the idea of citizenship. This caused justice to be increasingly associated with equality and universality, which in Europe saw an emergence of the concept of natural rights. Another important aspect is that emergence of standing police forces and permanent penitential institutions. The death penalty becomes an increasingly unnecessary deterrent in prevention of minor crimes such as theft. Additionally, in countries like Britain, law enforcement officials became alarmed when juries tended to acquit non-violent felons rather than risk a conviction that could result in execution. The 20th century was one of the bloodiest of the human history. Massive killing occurred as the resolution of war between nation-states. A large part of execution was summary execution of enemy combatants. Also, modern military organisations employed capital punishment as a means of maintaining military discipline. In the past, cowardice, absence without leave, desertion, insubordination, looting, shirking under enemy fire and disobeying orders were often crimes punishable by death. One method of execution since firearms came into common use has almost invariably been firing squad. Moreover, various authoritarian states—for example those with fascist or communist governments—employed the death penalty as a potent means of political oppression. Partly as a response to such excessive punishment, civil organisations have started to place increasing emphasis on the concept of human rights and abolition of the death penalty.

1.4 Death sentence and Bangladesh

Of all the punishments, death penalty occupies the most significant position in the administration of criminal justice. This is because death penalty is a punishment that extinguishes the light of life, takes away hopes and aspirations of the world, and deprives the blameless children of parental affection, love and care. This is an inhuman, degrading, cruel punishment symbolising the primitive propensity in punishing offenders. Article 35(5) of the constitution of the People's Republic of Bangladesh precisely states that no person shall be subjected to cruel, inhuman, or degrading punishment. Despite it our courts have been continuously inflicting inhuman punishment of death penalty provided by law for various offences.

This article will attempt to state whether death penalty serves the end of justice. Firstly, let's have a glimpse of the end of the administration of criminal justice.

End of Criminal Justice: The purpose of criminal justice is to punish the wrongdoer. He is punished by the state. The question arises what is the purpose of punishment or in other words, end of criminal justice. From very ancient times a number of theories have been given concerning the purpose of punishment. These theories are in brief stated below.

Deterrent Theory (Deterrent Punishment): According to this theory, the object of punishment is not only to prevent the wrongdoer from doing a wrong a second time but also to make him an example to other persons who have criminal tendencies. To quote Salmond: “Punishment

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is before all things deterrent and the chief end of the law of crime is to make the evil doer an example and a warning to all that are likeminded with him.”

Preventive Theory (Preventive Punishment): This theory attempts to prevent the wrongdoer from committing offences again. The offenders are disabled from repeating the offences by such punishment as imprisonment, death, exile etc. Prevention seems to be the chief and only universal purpose of punishment. The law threatens certain pains, if you do certain things, intending thereby to give you a new motive for not doing them.

Reformative Theory: The object of punishment should be to bring about the moral reforms of the offenders. Even if an offender commits a crime, he does not cease to be a human being. He may have committed a crime under circumstances which might never occur again. The advocates of the reformative theory contend that by a sympathetic, tactful and loving treatment of the offenders, by moral education and proper training, a revolutionary change may be brought about in their characters.

Retributive Theory: In primitive society, the person wronged was allowed to have his revenge against the wrongdoer. The principle of “an eye for an eye”, “a tooth for a tooth” was recognised and followed. Plato was supporter of this theory. He wrote: “Every culpa demands expiation; the culpa is ugly, it is contrary to justice and order; the expiation is beautiful because all that is just is beautiful and to suffer for justice is also beautiful.”

Comparative Study: The modern world tends to reform the offenders instead of punishing them. The reason is that modern Criminology and Penology treat the offenders as sick, subnormal human beings who may be transformed into good citizens by educative and reformative treatment to them by government.

It is contended that the deterrent theory has been proved ineffective in checking crimes. Provisions for severe punishment in Penal Code have failed to stop increasing crimes in the world. Excessive harshness of punishment tends to defeat its own purpose by arousing sympathy of the public towards those who are given cruel punishment. Deterrent punishment is likely to harden the criminal instead of creating in him the fear of law. Hardened criminals are not afraid of punishment. Punishment loses its horror once the criminal is punished. Retributive theory has also been criticized as barbaric and uncivilized form of punishment. Revenge is wild justice. It merely aggravates the mischief.

Preventive punishment may be effective in certain cases, for instance, cancellation of driving licence, dismissal of service etc but inflicting severe pains in the name of prevention ultimately results in nothing other than hardening criminals. Again the application of reformative theory runs the risk of increasing crimes in the society. If criminals are to be sent to prison to be transformed into good citizens by physical, intellectual and moral training, prisons must be turned into comfortable dwelling places. There are many incorrigible offenders who are beyond the reach of reformative influences and with whom crime is not a bad habit but an instinct and they must be left in despair. It is true that criminals generally are not normal human beings. They are mentally diseased and abnormal human beings. However if all the offenders are treated leniently, even ordinary sane people may be tempted to commit crimes in view of the lenient attitude of law towards crimes.

The perfect system of criminal justice cannot, therefore, be based on any one theory of punishment. Every theory has its own merits and every effort must be made to take the good
points of all. The deterrent aspect of punishment must not be ignored. Likewise the reformatory aspect must be given its due place. The personality of the offender is as important as his actions and we must not divorce his actions from his personality. The offender is not merely a criminal to be punished. He is also a patient to be treated. Punishment must be given in proportion to the gravity of the crime. It must be small for minor crimes and heavy for major crimes. The first offender should be leniently treated. Special treatment should be given to the juvenile offenders\(^7\). It must not be forgotten that motive for the crime\(^8\) is generally lacking in the case of children. They commit petty offences on account of bad company and bad neighbours. Their cases must be handled with imagination and sympathy. While awarding punishment, the judge should study the character and age of the offender, his early breeding, his education and environment, the circumstances under which he committed the offence, the object with which he committed the offence and other factors.

Death Penalty: The world is divided upon the issue. In the administration of criminal justice, sentencing of offenders to death is a much talked about topic and has always occupied a significant place in discussions. In ancient times and even in the middle ages, the death penalty was a common kind of punishment and was awarded even for petty offences like shoplifting, cattle stealing, cutting down trees etc. The object was to deter others from doing the offence creating panic in the mind of like minded persons. In course of time, death penalty was proved to have failed to serve the end of justice. In United Kingdom the offence of pickpocketing was awardable with death sentence but the pickpockets were seen busy with their activities in the crowd of people who gathered to see the execution of death sentence. So a section of lawmakers, jurists and lawyers raised their voice against death sentence and argued that death penalty did not serve the end of justice. Moreover this form of punishment is barbaric, savage and immoral institution which undermines the spirit that human beings may be reformed.

The proposals for abolition of death sentence for petty offences was brought about but there was a lot of hue and cry from lawyers, judges and parliamentarians and the so called protectors of social order. Six times the House of Commons passed the bill and six times the House of Lords rejected the same. With the passage of time, the voice for abolition of death penalty grew stronger over the world especially in Britain. However, in spite of opposition, the bill was passed and the number of cases in which capital punishment was awarded was reduced year after year and death penalty was reserved for offences like murder and treason.

Currently, in the world 133 countries have abolished capital punishment dejure or defacto. 64 countries have retained it. Bangladesh is one of them.(source: Amnesty International Website).

In UK, death penalty was abolished in 1965 except for offences of treason and certain forms of piracy and offences committed by members of the Armed Forces during wartime.

In India, the recent trend is clearly towards the abolition of death sentence. Before the amendment of Criminal Procedure Code in 1955, it was obligatory for a court to give reasons for not awarding death sentence in case of murder. Under the Criminal Procedure Code,

\(^7\) In Bangladesh for the juvenile offenders there are remand homes in Jessore and Tongi district. The Children Act, 1974 is applicable for the juveniles. There are specific provisions in the Penal Code (section-82/83) and also in the Cr P C, 1898 in section 29 B.

\(^8\) See-Section-35/33 of the Penal Code, 1860.
1973, the court has to record reasons for awarding death sentence. However, Death sentence was awarded on 31st July 2015 for allegation of terrorism to a Muslim ‘Memon’ for Bombay attack with a huge controversy including twitter message by famous actor Mr. Salman Khan and application to halt the crime by a lot of civil society members which was overturned by the President and execution held.

A compassionate alternative of life imprisonment is gaining judicial ground in India. In a leading case of Bachan Sing v. State of Punjab(1980) 2 SCC 684, the Supreme Court held by a majority of four to one that the provisions of death sentence as an alternative punishment for murder in section 302 of Penal Code was not unreasonable and was in the public interest. The dissenting view of Justice Bhagwati was that instead of death sentence, the sentence of life imprisonment should be imposed. He put emphasis on barbarity and cruelty involved in death sentence. It is irrevocable and cannot be recalled. It extinguishes the flame of life for ever. It is destructive of the right to life which is the most precious right of all, a right without which enjoyment of no other right is possible. Justice Bhagwati rejects the view that death penalty acts as a deterrent against potential murderers. According to him, this view is a myth which has been carefully nurtured by a society which is actuated not so much by logic or reason as by a sense of retribution.

In 1983, the Indian Supreme Court in a ruling directed to impose death penalty only in rare cases. In India, death sentence was for the last time effectuated in 2004, hanging Dhananjay to death for the offence of rape and murder of a schoolgirl belonging to minority group.

The US Supreme Court permitted death sentence in 1976. Despite this permission, 13 states including District of Colombia have ever sentenced none to death. Recently New Jersey as the first state of America has passed law abolishing death penalty. The human rights activists have warmly welcomed it terming the step as a milestone in the history of American criminal justice.

The United Nations Organisation⁹ has been working worldwide for the abolition of death penalty. On November 15, 2007, a resolution was passed in UN General Assembly regarding abolition of death penalty. 99 member countries voted for and 52 countries including United States of America against the resolution. The rest 33 countries abstained themselves from voting. Notably the resolution is not binding upon the countries. But this shows that the international communities want abolition of capital punishment.

In 1977, a world conference on capital punishment was held in the capital of Sweden. Since then the voice against such a cruel punishment grew stronger worldwide. The various organisations are working over the world against death sentence. The major organisations are Amnesty International, European Union. In 2002, World Coalition against the Death Penalty (WCADP) was formed under the patronisation of EU in Rome of Italy. This coalition has been observing 10 October as the day against death penalty since 2003.

Death Penalty in Bangladesh: The legislative authority of Bangladesh has with a view to checking crimes provided a set of statutes which have empowered the courts to impose death penalty for various offences. Penal Code, 1860 has incorporated seven offences for which death sentence may be given. These are: 1.waging war against Bangladesh (s.121), 2. abetting

⁹ http://www.lib.umich.edu/govdocs/intl.html
mutiny actually committed (s.132), 3. giving or fabricating false evidence upon which an innocent person suffers death (s.194), 4. murder (s.302), 5. abetment of suicide of child or insane person (s.305), 6. attempt to murder by life-convicts (s.307) and 7. dacoity with murder (s.396).

The Special Powers Act, 1974 has provided death penalty for the offences of sabotage (s.15), counterfeiting currency notes and Government stamps (s.25A), smuggling (s.25B), and adulteration of, or sale adulterated food, drink drugs or cosmetics (s.25C).

_Nari o' Shishu Nirjaton Daman Ain 2000_10 has incorporated death as punishment for the offences committed by combustible and likely other substances (s.4), for women trafficking etc (s.5), for children trafficking (s.6), for ransom (s.7), for ravishing any woman or child who dies consequently [s.9(2)], causing death for dowry (s.11), maiming or mutilation of children for begging (s.12).

The courts and tribunals of Bangladesh are frequently imposing death penalty under various enactments. During the rule of four-party alliance a good number of criminals were sentenced to death, especially after the constitution of Monitoring Cell. During the last seven years almost 30 death sentences were executed. Now the question arises: has the death penalty reduced the incidents of crimes? Has it been able to prevent the offences or to act as a deterrent? In our republic a number of persons depend for maintenance upon the income of a single adult person. What happens to these dependants when the state takes away the life of that person for offences committed by him in the heat of passion and on the spur of moment? Is it not injustice to them without taking any step for their maintenance, care and good environment which are essential for their mental and physical growth as good citizens of the republic? The state cannot deprive any child of its father's love and affection. The state can not do injustice in the name of checking crimes.

1.5 Controversy regarding death penalty

Capital punishment is often the subject of controversy. Opponents of the death penalty argue that it has led to the execution of innocent people, that life imprisonment is an effective and less expensive substitute, that it discriminates against minorities and the poor, and that it violates the criminal's right to life. Supporters believe that the penalty is justified for murderers by the principle of retribution, that life imprisonment is not an equally effective deterrent, and that the death penalty affirms the right to life by punishing those who violate it in the strictest form. Clearly there is no point of agreement in this regard. This is why we find some countries abolishing it while others retaining it and also other not executing people in spite of retaining the penalty. The experts as well the intellectuals have tried to find the answer of the question if the death penalty is a tool for justice or it is just a weapon used by the state for dominating people. The death penalty is an inherently unjust and arbitrary punishment, however heinous the crime for which it is inflicted. Studies globally have shown

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10 The Act, 2000 is applicable for child (below 16 years of age) and women. For full version of the Act see- Bangladesh Code, vol.32, pp-321-337.
that it is more likely to be imposed on those who are poorer, less educated and from marginalized segments of society. The death penalty is irrevocable, yet the risk of error in its application is inescapable. Amnesty International recognizes the need to combat violent crime, but the death penalty has never been shown to deter crime more effectively than other punishments.

Surveys in the US and Canada regularly show that a sizable majority of adults are in favor of the death penalty for convicted murderers. Depending upon the exact question asked, 65 to 80% of adults support the death penalty. In 1984, individuals who give greatest support to capital punishment were found to be older, white, male, rich, urban dwellers, politically independent and religious believers. The percentage appears to increase over time when people perceive the crime rate as increasing.

A serious deficiency of almost all public opinion polls is that they generally ask too simple a question: whether the subject is in favor of the death penalty or not. They rarely offer alternatives to execution in their polling questionnaires. Public support for capital punishment declines greatly when alternatives to the death penalty are considered. The Death Penalty Information Center reported in 1993 that "Polls conducted in recent years in California, Florida, Georgia, Kentucky, Minnesota, Nebraska, New York, Oklahoma, Virginia and West Virginia all concluded that people prefer various alternative sentences to the death penalty." 6 (Emphasis ours)

Ohio survey in 1997:

The Survey Research Unit of Ohio State University's College of Social and Behavioral Sciences published a news release on 1997-OCT-1. It described the opinions of Ohioans towards the death penalty. The results were based on a random sampling of 805 English speaking adults who were interviewed by telephone during mid 1997-SEP. They found:

*66% favored the death penalty for convicted murderers; 9% were in favor under certain circumstances; 17% were opposed and 8% were ambivalent.
*46% thought it very likely or somewhat likely for an innocent person to be executed; 47% reported somewhat or very unlikely.
*Adults without a college degree were more likely to believe that an innocent person could be executed than were college graduates by a ratio of 50% to 27%
*59% would support an alternative to execution if it involved life in prison without chance of parole and a requirement that the inmate work while in prison with the money going to the victim's family. 31% supported the death penalty in preference to this alternative. An inmate working 40 hours a week, 50 weeks a year, over a 25 year sentence at $3.00 an hour would generate $150,000 for the family of the victim.
*Non-college graduates (60%), those under 30 years of age (67%), females (68%), those not married (64%) and African-Americans (70%) were more likely to support this alternative than college graduates (53%), those 30 years old or older (56%), males (49%), those married (55%) and Whites (56%).
The margin of error is less than 4% on these data.

Virginia surveys from 1989 to 1999:

A poll conducted by the Virginia Commonwealth University in 1989 asked adults in the state:

1. "Do you support the death penalty for convicted murderers?"
2. "Would you favor abolition of the death penalty if the alternative were a life sentence with no possibility of parole for 25 years, combined with a restitution program requiring the prisoner to work for money that would go to families of murder victims?"

They found that a majority of subjects surveyed preferred the latter alternative.

The Center For Survey Research at Virginia Tech has conducted a series of annual "Quality of Life in Virginia" polls from 1993 to 1999. They asked the identical questions. The polls showed that support for the death penalty is high in that state, but is slipping. A strong majority of adults has consistently favored the suggested alternative:

- Percent supporting the death penalty:
  - 82.8% in 1996
  - 79.5 in 1997
  - 75.4% in 1998
  - 74% in 1999

- Percent opposing the death penalty:
  - 13.2% in 1996
  - 17.1% in 1997
  - 20% in 1998
  - 20% in 1999

- Percent supported the suggested alternative:
  - 56.3 in favor, 37.9 disagree in 1998
  - 54.8 in favor, 40.5 disagree in 1999

The Death Penalty Information Center is a non-profit agency located in Washington, DC. They noted in a 1993-APR report that:

- A national survey in the U.S. was conducted in 1993 by Greenberg/Lake and the Tarrance Group. They revealed that, if given two options, the percentage of Americans who favor capital punishment is:
  - 77% if the alternative is no death penalty.
  - 56% if the alternative is no parole for 25 years.

11. U.S. national poll in 1993;
49% if the alternative is no parole ever.
44% if the alternative is no parole for 25 years, and a restitution plan is in place.
41% if the alternative is no parole ever plus restitution; 44% prefer the death penalty; 15% are unsure.
45 states and DC have a provision for life sentences without any chance of parole for 25 years.
33 states have a true life imprisonment provision which excludes the possibility of parole at any time.
Such information is often withheld from jurors in capital cases. "In 23 of the 29 states which utilize sentencing by the jury in capital cases, there is an absolute prohibition against any evidence or argument on parole." Many juries, thinking that the accused might be released in 7 years, select the death penalty.
States which have abandoned the death penalty, on average, have not observed an increase in the homicide rate.
The margin of error in the national poll is 3.1%

The Survey Research Program of the College of Criminal Justice at Sam Houston State University in Texas was published in the Sourcebook of Criminal Justice Statistics by the Bureau of Justice Statistics. It was placed online by SUNY in Albany, NY. The subjects were first asked "Are you in favor of the death penalty for persons convicted of murder?" 73.4% of the subjects said yes. Male, white, middle-aged, middle-class, suburban, mid-west, Republicans respondents tended to be more in favor of capital punishment. Of that 73.4% who were in favor of the death penalty, the researchers then asked a second question: "If you knew that murderers would be given a true life sentence without the possibility of parole, would you continue to favor the death penalty?" 75.7% still favored capital punishment. Thus, a slim majority (55.6% of the total population) would favor the death penalty over a "life sentence without the possibility of parole." This is higher than the 49% reported in the 1993 national survey.

The difference in poll results was probably caused by differences in the specific wording of the questions asked. The 1993 poll talked about no parole ever. The implication is that the only way that the inmate would get out of prison would be in a pine box. Other polls indicate that many adults mistrust the penal system; they believe that a "sentence without the possibility of parole" really means that the inmate would be released on parole after many years.

U.S. national poll in 2001:

An ABC News/Washington Poll was released on 2001-MAY-2. It shows a public ambivalence towards the continuation of the death penalty. When asked whether or not they supported the death penalty, the public responded 63% in favor. This is a major reduction in support from the 80% level, seven years previously. Of even greater potential importance is that if life without parole is offered as an option, response is a statistical dead heat: 46% favor the death penalty; 45% favor life without any chance at parole. The ABC News/Washington Post poll also determined that most American adults believe that:

- The death penalty does not act as a deterrent.
- The death penalty is applied unfairly across jurisdictions.
- Innocent people are sometimes executed.
51% of the public would support a nationwide moratorium while a commission studies whether the death penalty is being administered fairly. When they were told that just such a moratorium and study was underway in Illinois, their support rose to 57%.

At their second biennial Churchwide Assembly of the Evangelical Lutheran Church in America, which started at Orlando, FL, on 1991-AUG-28, the ELCA adopted a statement on the death penalty. The ELCA is a mainline/liberal Christian denomination. They state that God authorizes the state to kill individuals when "failure to do so constitutes a clear danger to society." But they ask whether it is possible to administer the death penalty justly. "For the Evangelical Lutheran Church in America, following Jesus leads to a commitment to restorative justice" as an alternative to the death penalty. "...It is because of this church's ministry with and to people affected by violent crime that we oppose the death penalty.

Executions focus on the convicted murderer, providing very little for the victim's family or anyone else whose life has been touched by the crime. Capital punishment focuses on retribution, sometimes reflecting a spirit of vengeance. Executions do not restore broken society and can actually work counter to restoration." (Emphasis in the original).

1.6 Conclusion

Bangladesh has not yet seen a serious debate on death penalty. Even in the press the imposition of death penalty on convicts is accepted as a matter of fact. Elsewhere in Europe and USA Christian religious groups have engaged themselves in for or against the justification of the death penalty. But the religious leaders of Bangladesh has hardly spoken on the issue. According to informed sources Islam prefers death penalty for certain crimes. Islam being the religion of the majority people of Bangladesh it would not be illogical to assume that there is a silent majority who supports death penalty.

It has been pledged in the preamble of the republic's constitution that equality and justice will be secured for all citizens. The liberation heroes had dedicated their lives with a view to establishing a welfare state in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed. Protection against cruel, inhuman, or degrading punishment is a fundamental right under art.35 (4) of the constitution. So time has come to reconsider death sentence as a means of punishment. The world's trend is precisely towards the correction of the offenders in lieu of inflicting cruel, inhuman and degrading punishment. Bangladesh as a democratic country cannot lag behind.

The state is undergoing cumulative increase of crimes owing to a great deal of factors such as lack of good governance, absence of rule of law, corruption, patronisation of terrorists, wide gap between the haves and have-nots, confrontational politics and so on. Instead of giving emphasis on removing these factors, we are wrongly attempting to check crimes by inflicting exemplary punishment.
CHAPTER 2

Religion and Capital Punishment

2.1 Introduction

The debate about the imposition of capital punishment may be as old as the supreme penalty itself. The circumstances of its imposition and administrations well as the wisdom of its use altogether, have preoccupied , jurists, scholars and theologists for many centuries. Religion has played a substantial role in forging our attitude towards death penalty. In order to understand the mind set of the death penalty supporters it is necessary to discuss some of the major religions of the world and their perception of death penalty. Bangladesh is a moderate Islamic country. But there is a strong presence of other religion. The mass media and press often discuss point of view of the religions concerning death penalty.

2.1.1. RELIGION AND CAPITAL PUNISHMENT

“*The official teachings of Judaism approve the death penalty in principle but the standard of proof required for application of death penalty is extremely stringent. Christianity in theological terms follows the teaching of Thomas Aquinas who accepted the death penalty as a necessary deterrent & prevention method but not as the means of vengeance. Roman Catholic Church holds that death penalty is no longer necessary if it can be replaced by incarceration. Scholars of Islam hold it to be permissible but the victim or the family of victim has the right to grant pardon. The teachings of other religions also tend to discourage death penalty as the means of vengeance.*"  

In Hindu Law, death Penalty prevailed from history immemorial.

2.2. Islam

Scholars of Islam hold it to be permissible but the victim or the family of the victim has the right to pardon. In Islamic jurisprudence (Fiqh), to forbid what is not forbidden is wrong. Consequently, it is impossible to make a case for abolition of the death penalty which is explicitly endorsed.
Sharia Law or Islamic law\textsuperscript{13} may require capital punishment, there is great variation within Islamic nations as to actual capital punishment. Apostasy in Islam and Stoning to death in Islam are controversial topics. Furthermore, as expressed in the Qur'an, capital punishment is condoned. Although the Qur'an prescribes the death penalty for several hadd (fixed) crimes—including rape—murder is not among them. Instead, murder is treated as a civil crime and is covered by the law of qisas (retaliation), whereby the relatives of the victim decide whether the offender is punished with death by the authorities or made to pay diyah (wergild) as compensation.

"If anyone kills a person - unless it be for murder or for spreading mischief in the land - it would be as if he killed all people. And if anyone saves a life, it would be as if he saved the life of all people" (Qur'an 5:32). "Spreading mischief in the land" can mean many different things, but is generally interpreted to mean those crimes that affect the community as a whole, and destabilize the society. Crimes that have fallen under this description have included: (1) Treason / Apostasy (when one leaves the faith and joins the enemy in fighting against the Muslim community) (2) Terrorism - Land, sea, or air piracy (3) Rape (4) Adultery (5) Homosexual behavior.

Right to life: The Holy Quran declares human life as sacro-sanct. Allah said, “Do not take life—which Allah made sacred, except just cause. If any one slew a person unless it be a murder or for spreading mischief in the land, it would be as if he slew the whole people; And if anyone saved a life it would be as if he saved the life of whole people.” Al-Quran 17:33, 5:55.

Again Allah said, “If any one is slain wrongfully, I have given his heir the authority to demand Qisas or to forgive but let him not exceed the boundary in the matter of taking life.” Al-Quran 17:33.

Hazrat Muhammad (PBUH) said in the farewell Hajj, “Three things of a Muslim are prohibited for another Muslim; his blood, his property and his reputation.” (Hadith: Bukhari and Muslim).

Thus Islam ensures the security of life through imposing ban on killing man except on reasonable grounds.

\subsection*{2.3. Buddhism}

There is disagreement among Buddhists as to whether or not Buddhism forbids the death penalty. The first of the Five Precepts (Panca-sila) is to abstain from destruction of life. Chapter 10 of the Dhammapada states:

\begin{quote}
Everyone fears punishment; everyone fears death, just as you do. Therefore do not kill or cause to kill. Everyone fears punishment; everyone loves life, as you do. Therefore do not kill or cause to kill.
\end{quote}

Chapter 26, the final chapter of the Dhammapada, states, "Him I call a brahmin who has put aside weapons and renounced violence toward all creatures. He neither kills nor helps others

\textsuperscript{13}Sources of Islamic law can be divided into two categories; (i) Primary Sources and (ii) Secondary Sources.

i) Primary sources: The primary sources of Muslim law are Al-Quran, Sunnah, Ijma and Qiyas.

ii) Secondary sources of Islamic law: The secondary sources of Islamic law are Ishihsan, Ishihslah, Istidilal/Istishab, Ijthid and Taqlid.

Other sources of Muslim law include Custom or Urf, Ray/ Rai, Iqhtilaf, Illat, Fiction, Fatwa and British Law.
to kill." These sentences are interpreted by many Buddhists (especially in the West) as an injunction against supporting any legal measure which might lead to the death penalty. However, as is often the case with the interpretation of scripture, there is dispute on this matter. Thailand, where Buddhism is the official religion, practices the death penalty, as do all other countries where the majority of the population is Buddhist, i.e. Sri Lanka, Mongolia, and Myanmar, although the last has had a moratorium on executions since 1997. Moreover, throughout almost all history, countries where Buddhism has been the official religion (which includes most of the Far East and Indochina) have practiced the death penalty. One exception is the abolition of the death penalty by the Emperor Saga of Japan in 818. This lasted until 1165, although in private manors executions continued to be conducted as a form of retaliation.

2.4. Judaism

The official teachings of Judaism approve the death penalty in principle but the standard of proof required for application of death penalty is extremely stringent, and in practice, it has been abolished by various Talmudic decisions, making the situations in which a death sentence could be passed effectively impossible and hypothetical. "Forty years before the destruction" of the Temple in Jerusalem in 70 AD, i.e. in 30 AD, the Sanhedrin effectively abolished capital punishment, making it a hypothetical upper limit on the severity of punishment, fitting in finality for God alone to use, not fallible people.\textsuperscript{[45]}

In law schools everywhere, students read the famous quotation from the 12th century legal scholar, Maimonides,

"It is better and more satisfactory to acquit a thousand guilty persons than to put a single innocent one to death."

Maimonides argued that executing a defendant on anything less than absolute certainty would lead to a slippery slope of decreasing burdens of proof, until we would be convicting merely "according to the judge's caprice." Maimonides was concerned about the need for the law to guard itself in public perceptions, to preserve its majesty and retain the people's respect.\textsuperscript{[46]}

2.5. Christianity

Although some interpret that John 8:7 of the Bible condemns the death penalty, others consider Romans 13:3-4 to support it. Christian positions on this vary. The sixth commandment (seventh in the Roman Catholic and Lutheran churches) is preached as 'Thou shalt not kill' by some denominations and as 'Thou shalt not murder' by others. As capital punishment is not murder, and none of the denominations have a hard-line stance on the subject, Christians are free to make a personal decision.

Views of the Early Christian Movements on the Death Penalty

During the first few centuries after Jesus' execution, Christians were instructed to not participate in the execution of a criminal, to not attend public executions, and even to not lay a charge against a person if it might possibly eventually result in their execution. Clement of Rome, Justine Martyr and other Christian writers who discussed capital punishment during the first three centuries after Jesus' execution were absolutely opposed to it.
One example is Lactantius (260 to 330 CE) who is primarily known for his books "Introduction to True Religion" and "The Divine Institutes." He wrote in The Divine Institutes, Book 6, Chapter 20:

"When God forbids us to kill, he not only prohibits the violence that is condemned by public laws, but he also forbids the violence that is deemed lawful by men. Thus it is not lawful for a just man to engage in warfare, since his warfare is justice itself. Nor is it [lawful] to accuse anyone of a capital offense. It makes no difference whether you put a man to death by word, or by the sword. It is the act of putting to death itself which is prohibited. Therefore, regarding this precept of God there should be no exception at all. Rather it is always unlawful to put to death a man, whom God willed to be a sacred creature."

This rigid opposition to the death penalty during the first few centuries of the Christian movement appears to have been motivated by the fact that the early Christians came to understand that in Jesus' sacrifice of himself, the cycle of vengeance had been broken. The moral universe that had been damaged by sin was repaired once and for all. God had found a way to break through our perpetual sinfulness. Jesus' death on the cross was the final payment for sin—a final sacrifice that made unnecessary other forms of sacrifice, including the human sacrifice that we call capital punishment. Jesus showed us that salvation from sin lay in forgiving the enemy, not in getting even by imitating the enemy's wickedness. When we forgive, we see new possibilities both for our enemy and for ourselves.

Christian movement reverses its stance:

According to author James Megivern, Clement of Alexandria (circa 150 - circa 213) was "the first Christian writer to provide theoretical grounds for the justification of capital punishment....[Clement] appealed to a rather questionable medical analogy [a doctor amputates a diseased organ if it threatens the body] rather than to anything of specifically Christian inspiration." Once Emperor Constantine became the first pro-Christian emperor in 312 CE, the Christian movement began to reverse its stance against the death penalty. Christians at the time were deeply divided among what has been called the proto-orthodox faction, the Gnostics, and a very few surviving Jewish Christians. The proto-orthodox found execution of religious heretics (i.e. religious minorities) to be a useful tool in consolidating their power. After 313 CE, "emperors passed at least 66 decrees against Christian heretics, and another 25 laws 'against paganism in all its forms'......The violence of the age was extraordinary, and Christians were becoming more and more deeply involved in it....Once Christianity had become the state religion [in the late 380s CE], the imperial values articulated in Roman law tended to overwhelm gospel values." In later centuries, the Church became heavily engaged in the mass murders and genocides of such groups as: Albigensians, Anabaptists, Cathari, Gnostics, Jews (particularly as a byproduct of the Crusades), Knights Templar, Waldensians, and "Witches" (during the "Burning times" in the late Middle Ages and Renaissance).
The Contemporary situation

Roman Catholic Church

The Roman Catholic Church traditionally accepted capital punishment as per the theology of Thomas Aquinas (who accepted the death penalty as a necessary deterrent and prevention method, but not as the means of vengeance; see also Aquinas and the death penalty). Under the pontificate of Pope John Paul II, this position was refined. As stated in John Paul II's encyclical Evangelium Vitae, the Roman Catholic Church holds that capital punishment should be avoided unless it is the only way to defend society from the offender in question, and that with today's penal system such a situation requiring an execution is either rare or non-existent.

But within the Christian religion others have taken a more definite stand. For example, the Lambeth Conference of Anglican and Episcopalian bishops condemned the death penalty in 1988. The United Methodist Church, along with other Methodist churches, also condemns capital punishment, saying that it cannot accept retribution or social vengeance as a reason for taking human life. The General Conference of the United Methodist Church calls for its bishops to uphold opposition to capital punishment and for governments to enact an immediate moratorium on carrying out the death penalty sentence. In a 1991 social policy statement, the ELCA officially took a stand to oppose the death penalty. It states that revenge is a primary motivation for capital punishment policy and that true healing can only take place through repentance and forgiveness.

Other Protestants

Several key leaders early in the Protestant Reformation, including Martin Luther and John Calvin, followed the traditional reasoning in favour of capital punishment, and the Lutheran Church's Augsburg Confession explicitly defended it. Some Protestant groups have cited Genesis 9:5–6, Romans 13:3–4, and Leviticus 20:1–27 as the basis for permitting the death penalty. On the other hand, the Mennonites and Friends have opposed the death penalty since their founding, and continue to be strongly opposed to it today. These groups, along with other Christians opposed to capital punishment, have cited Christ's Sermon on the Mount (transcribed in Matthew Chapter 5–7) and Sermon on the Plain (transcribed in Luke 6:17–49). In both sermons, Christ tells his followers to turn the other cheek and to love their enemies, which these groups believe mandates nonviolence, including opposition to the death penalty.

In 1969, 1973, 1977 and 1979 the General Synod of the UCC adopted resolutions opposing capital punishment. The church's Office for Church in Society, Commission for Racial Justice and the United Church Board for Homeland Ministries proposed a resolution "Call for abolition of the death penalty." It was adopted by the General Synod in 1999-JUL. The resolution says, in part:

"WHEREAS, there is no conclusive evidence that the death penalty brings about real healing for victims' families and, in fact, public opinion strongly supports life imprisonment without parole along with some form of restitution for victims' families as a more meaningful gesture toward healing;..."
"THEREFORE, BE IT RESOLVED that the Twenty-second General Synod of the United Church of Christ reaffirms the long-standing opposition within the United Church of Christ to the death penalty, including a resolution by the Council for Christian Social Action in 1962 and resolutions by the Seventh, Ninth, Eleventh and Twelfth General Synods and urges the abolition of capital punishment."

**Conclusion**

The major religion of the world has great influence on mankind. As we understand from the foregoing description of the attitude of various religion towards death penalty, we can safely conclude that accept some sects of Christianity other religion groups have yet to decide their mind on the issue. Summarizing the verdict of Scripture and tradition, we can glean some settled points of doctrine. It is agreed that crime deserves punishment in this life and not only in the next. In addition, it is agreed that the State has authority to administer appropriate punishment to those judged guilty of crimes and that this punishment may, in serious cases, include the sentence of death. This abolitionist position has a tempting simplicity. But it is not really new. It has been held by sectarian Christians at least since the Middle Ages. Many pacifist groups, such as the Waldensians, the Quakers, the Hutterites, and the Mennonites have shared this point of view. But, like pacifism itself, this absolutist interpretation of the right to life found no echo at the time among Catholic theologians, who accepted the death penalty as consonant with Scripture, tradition, and the natural law.

The mounting opposition to the death penalty in Europe since the Enlightenment has gone hand in hand with a decline of faith in eternal life. In the nineteenth century the most consistent supporters of capital punishment were the Christian churches, and its most consistent opponents were groups hostile to the churches. When death came to be understood as the ultimate evil rather than as a stage on the way to eternal life, utilitarian philosophers such as Jeremy Bentham found it easy to dismiss capital punishment as “useless annihilation.”

Many governments in Europe and elsewhere have eliminated the death penalty in the twentieth century, often against the protests of religious believers. While this change may be viewed as moral progress, it is probably due, in part, to the evaporation of the sense of sin, guilt, and retributive justice, all of which are essential to religion and faith. The abolition of the death penalty in countries may owe more to secular humanism than to deeper penetration into the various dictates of the religions.
CHAPTER THREE

The Capital Punishment and the “right to life”

3.1 Introduction

The death penalty is the ultimate cruel, inhuman and degrading punishment. It violates the right to life. Right to Life is a inherent right of an individual. Death penalty is in conflict with the concept of right to life. The death penalty also encompass other human rights violations. When a State jails an individual solely because of their belief it violates right to freedom of belief and expression. The death penalty is sometimes used to silence political opponents forever or to eliminate ‘troublesome individuals’

3.2 Before the UN’s Universal Declaration

The “right to life” and the death penalty have namely been walking on the same common road since the beginning. They have followed in each ones footsteps. The following quote in what concern the two preceding centuries illuminate that:

“Several national constitutions of the nineteenth and early twentieth century recognized the right to life, generally associated with a phrase acknowledging the exception of capital punishment. For example, Sweden’s 1809 Constitution states: The King … shall not deprive anyone or permit anyone to be deprived of life without legal trial and sentence. In a study prepared by the Secretariat of the commission on Human Rights in early 1947, twenty-six such provisions in various national constitutions were identified.”

3.3 The United Nations (UN)

In UN’s Universal Declaration of Human Rights 1948, there is no word of the capital punishment neither direct nor indirect. The article 3 says in full: “Every one has the right to life, liberty and security of person” There is no mention either that death penalty make an exception to this article or that the article make death penalty unacceptable. When creating the UN’s Universal Declaration there were indeed some States which in different ways expressed a desire to limit the application of the capital punishment. But they were in minority. And in viewing the preparatory work of the Universal Declarations we find that, before the second session to the UN’s Universal Declarations, the Secretariat for the Commission of the Human Rights drew up a proposal of 48 articles. The article of the “right to life” which were proposed by the Secretariat acknowledge the capital punishment as the only exception to the “right to life”. The proposal says:

“Everyone has to life. This right can be denied only to persons who have been convicted under general law of some crime to which the death penalty is attached.”
To this proposal they added 26 national constitutions/fundamental laws which deal with the “right to life”. Of these 26, 18 expressly named the capital punishment as an exception to the “right to life”. And a report by the UN Secretariat, in 1980, held firmly that the UN’s Universal Declaration of human rights remained “neutral concerning the capital punishment. And we ought to know that the dominate world opinion at the time when UN’s Universal Declaration was approved was that there was no conflict between the “right to life” and capital punishment. As William Schabas (The abolition of the Death Penalty in International Law, 1997, page 10.) writes:

“In 1948, the death penalty was an almost universally recognized exception to the right to life”.

UN’s International Covenant on Civil and Political Rights, 1966, (into force 1976). Article 6 (contained 6 paragraphs) is about the capital punishment. Indeed the convention wished to abolish the capital punishment according to paragraph 6, but not from any reason that the “right to life” demands it, because still we find the “right to life” and death penalty side by side. So the classical traditional view is still unbroken. The two first paragraphs in the article says:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and punishment of the crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

But in December 1971, resolution 2857 (XXVI) was passed by the UN and there we find these words:

“… in order fully to guarantee the right to life, provided for in article 3 of the Universal Declaration of Human Rights, the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries.”

The resolution were approved by 59 member States. But almost half, 54 member States, including USA, abstained.

This is the first time in history that a human rights resolution suggests that the “right to life” in some manner may conflict with the death penalty. In the introduction it says “article 3 of the Universal Declaration of Human Rights”, and with that they wish to use this article 3 of the Universal Declaration of Human Rights”, and with that they wish to use this article as a reason for abolishing the death penalty. That kind of reference to article 3 when the death penalty is treated we can find also in other coming documents from the UN. Two important remarks must then be pointed out, 1) this is a new interpretation of article 3 which has no historical support, 2) almost all the member States which accepted the UN’s Universal Declaration in 1948 had rejected such an interpretation. A question arises: is it morally and intellectually acceptable to force a definite interpretation into an international document and reject the neutral view towards the death penalty.

1989 there is the second optional protocol to the International Covenant on Civil and political Rights (from 1966, see above). This protocol is against capital punishment in time of peace (but not in war). And that by referring also to article 3 in the UN’s Universal Declaration. The introduction says:

“…. Recalling article 3 of the Universal Declaration of Human Rights, adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is
desirable, Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life, Desirous to undertake hereby an international commitment to abolish the death penalty, Have agreed as follows…”

59 states voted for this protocol, 26 States voted against, and 48 states abstained.

Among UN’s 189 member States, up to now only about 44 States have ratified this additional protocol.

The Commission of Human Rights, 1998, resolution 8, is exhorting all states to work for the abolition of the death penalty, also with reference to article 3 in the Universal Declaration. This new interpretation are as we can see, now more often heard.

Of the Commissions 53 member States 26 States were voting for, 13 States voting against, and 12 States against, and 12 States abstained.

It is important to observe that when opponents to the penalty refer to late protocols and resolutions from the UN which express disapproval of the dealth penalty, these text were never passed unanimously and from mutual agreement. The topic of the capital punishment have split the UN into two halves.

3.4 Europe

In the European Convention on Human Rights from 1950, the death penalty is addressed. The first paragraph in article 2 says:

“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”.

As we can see, in the European Convention, the death penalty is an unusually plain exception to the “right to life”. (Three other exceptions for the “right to life” is also given in paragraph 2.)

In 1983 three were written an additional paragraph to the European Convention – protocol number 6 (in force 1985). The tone against the death penalty had now become very sharp. So after about 30 years the abolitionists succeeded in transforming the lawfully permitted into something forbidden (in times of peace). The two first article says:

Article 1 – Abolition of the death penalty
The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.

Article 2 – Death penalty in time of war
A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

However, nowhere in this additional protocol is the ban against the death penalty in times of peace motivated by the “right to life” formula. That would of course strange, since the Convention from 1950 mention the death penalty together with the article of “right to life”.

Today almost all member States in the European Counsel have ratified this additional protocol. And for States that want to be members in the European Counsel it is an absolute necessity to have an intention to ratify this additional protocol. Otherwise they are not welcomed into community.
3.5 America

In America (North- Central and South America) there is an “American Convention on Human Rights”, 1969. Also in this Convention the right to life stands together with the death penalty.

Article 4 has the headline “Right to life” and the two first paragraphs says:

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, form the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently.

Most of the countries in America have ratified this Convention, but not the USA.

In 1990 there came an additional protocol to the Convention, "Protocol To The American Convention On Human Rights To Abolish The Death Penalty". Article 1 says :

"The States Parties to this protocol shall not apply the death penalty in their territory to any person subject to their jurisdiction."

Death penalty in war is yet allowed according to article 2.

In the introductory words to this additional protocol we met the formulation, "right to life " two times :

"That Article 4 of the American Convention on Human Rights recognizes the right to life and restricts the application of the death penalty …..That the abolition of the death penalty helps to ensure more effective protection of the right to life"

The protocol make clear that the Convention from 1969 speaks of the right to life and, at the same time, the death penalty. But now it is instead considered that a ban against the death penalty is a more effective protection for the "right to life ". Accordingly, in the year 1990 it is no more considered that the death penalty can be united with the right to life.

In 2001 there were only 8 States which had ratified this additional protocol.

3.6 Islamic declarations

The following two declarations from the Islamic world shows that the death penalty stands in a peaceful co-operation with the "right to life ".

Universal Islamic Declaration of Human Rights, 1981

Right to Life

a) Human life is a sacred and inviolable and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under the authority of the Law.

Arab Character on Human Rights, 1994
Article 5 Every individual has the right to life, liberty and security of person.

These rights shall be protected by law.

Article 10 The death penalty may be imposed only for the most serious crimes and anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.

Article 11 The death penalty shall under no circumstances be imposed for a political offence.

Article 12 The death penalty shall not be inflicted on a person under 18 years of age, on a pregnant woman prior to her delivery or on a nursing mother within two years from the date on which she gave birth.

Finally can be named the four Geneva Conventions from 1949. All the Conventions are opened also with these word:

"To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
    (a) violence to life and person….. ".

These words can be seen as a "right to life " declaration although formulated with other words.

At the same time the Geneva Conventions accepts the death penalty with certain restrictions, see the Geneva Convention 3, article 100 – 101, the Geneva Convention 4, article 68, the additional protocol 1, article 76:3,77:5, the additional protocol 2, article 6:4.

3.7 Conclusion

In principle and from a historical view, the death penalty and the right to life have, in theory and practice been following each other as friends. The UN’s Universal Declaration of Human Rights from 1948 contain nothing about the Death penalty. The declaration is, according to a UN rapport, “neutral” to the capital Punishment. An overwhelming majority of States who in 1948 accept the Universal Declaration of Human Rights did not believed that the death penalty (or imprisonment) violated on article 3. The Geneva Conventions expresses respect for man’s (right to) life and permits the death penalty. The European Convention from 1950 writes of the “right to life” and assert with great clarity that the death penalty is an exception to this right. The additional protocol number 6 to the European Convention which come into force 1985 ban the death penalty in times of peace, however without any reference to the “right to life”. The American Convention from 1969 speaks of right to life and permits the death penalty. The additional protocol from 1990 ban the death penalty in times of peace also with the “right to life” as a cause.

Islamic declarations speaks of “right to life” and the sanctity and inviolability of life, and permit the capital punishment.
In December 1971, there first appears a new interpretation of the concept of the “right to life” in an international document of human rights. Now and later on persons within UN (among others) begin to make use of the formula “right to life” (art.3 in Universal Declaration) in their hostility against the death penalty.
CHAPTER FOUR
Controversy Regarding and Debate on Death Penalty

3.1 Introduction

Debating in opposition to capital punishment Joseph Lowery said: "The death penalty is a matter of place and race, inequity and iniquity...Where the execution of Jesus Christ is most deplored in the South, the execution of human beings is most employed." He compared the "Bible Belt to the killing belt."

He referred to the United States "as the leader of the free world. But I don’t know who we are leading. Who's following us? Iran, Iraq, Libya, China. Nobody in the European Union is following us in the death penalty. Turkey held out, but recently they did away with it."

Lowery said supporters of the death penalty use the same arguments as those who once defended slavery "And the Bible was used to justify that as well. The state does not have the right to kill, to take a human life; the state does not have a right to enslave. It has the power, but the Bible addresses that. It says 'Not by power, nor by might, but by my spirit, says the Lord.' "

He noted that during the past century, "eight out of ten persons executed in the South were African-American. In Georgia, where I live, black males constitute 15 percent of the population but 50 percent of those who are on death row...The poor are rigidly prosecuted but poorly defended...capital punishment is for people who have no capital...Poor defendants are represented by lawyers who are paid meager fees and spend an average of two days on the case."

Lowery noted that "most of the major religious bodies in this country -- Methodist, American Baptist, National Baptist, all except for Southern Baptist -- oppose the death penalty." He said, "It’s interesting to me that killing [supposedly] damages the image of God when it’s done by a person, but it doesn’t damage it when it’s done by the state... [The death penalty] extends the cycle of violence; it affirms killing as an acceptable means of resolving social problems."

John Carr explained that the Catholic Church believes that the state has the "right to execute people, but other ways have evolved to protect society, specifically the penal system, and that the state ought to forego the right to execute people and protect society in other ways."

Debating in support of capital punishment Nathan Diament noted that there is no consensus on this issue among Jews. He said if one had to "sum up the position of my organization as the umbrella group for orthodox synagogues around the country in a pithy sound bite, I would say, we’re not abolitionists, but we are for a moratorium."

According to the Associated Baptist Press: "Barrett Duke, acknowledging that the state has undoubtedly convicted innocent people and that the death penalty has problems related to race and economics, said he opposes a moratorium while problems are studied." His concern about a moratorium is that many of its supporters "see it as simply the first step to the
abolition of capital punishment, not a real effort to try to change the system." He said that the SBC's prime concern is "that someone who's innocent might be executed. We are not oblivious to that accusation...If there is not clear and overwhelming evidence of guilt, then capital punishment should not be sought, should not be practiced...such a possibility is less likely today than it has ever been. There are more secure ways of determining guilt than there have ever been. It is the state’s responsibility to protect the image of God, in which we are created. Referring to a resolution at their year 2000 assembly Duke said: "Southern Baptists did decide to speak on this issue, so we need to show up and take the heat wherever we get invited to do that."

The resolution approved at the SBC's year 2000 assembly says, in part, that: "God authorized capital punishment for murder after the Noahic Flood, validating its legitimacy in human society...[messengers (delegates of the SBC)] support the fair and equitable use of capital punishment by civil magistrates as a legitimate form of punishment for those guilty of murder or treasonous acts that result in death."

Duke said that: "historically Southern Baptists have supported capital punishment in our rank and file. There were some attempts in the late 60s to have Southern Baptists actually go on record opposed to capital punishment...Southern Baptist rank and file rejected that as an option." He said that support for the death penalty "is a biblical position. And we do believe that the Bible continues to be relevant for life today." Commenting on the race and economic issues, he said: "To us, they are real issues, and we call for a study, and we call for change in the way this is done so that there is not racial or economic inequity in the system. However, we do acknowledge that the state has the right to execute those who have violated certain laws."

Support for the death penalty varies widely. A Gallup International poll from 2000 claimed that "Worldwide support was expressed in favour of the death penalty, with just more than half (52%) indicating that they were in favour of this form of punishment." A number of other polls and studies have been done in recent years with various results.

Both in abolitionist and retentionist democracies, the government's stance often has wide public support and receives little attention by politicians or the media. In some abolitionist countries, the majority of the public supports or has supported the death penalty. Abolition was often adopted due to political change, such as when countries shifted from authoritarnianism to democracy, or when it became an entry condition for the European Union. The United States is a notable exception: some states have had bans on capital punishment for decades (the earliest is Michigan, where it was abolished in 1846), while others actively use it today. The death penalty there remains a contentious issue which is hotly debated. Elsewhere, however, it is rare for the death penalty to be abolished as a result of an active public discussion of its merits.

In abolitionist countries, debate is sometimes revived by particularly brutal murders, though few countries have brought it back after abolishing it. However, a spike in serious, violent crimes, such as murders or terrorist attacks, has prompted some countries (such as Sri Lanka and Jamaica) to effectively end the moratorium on the death penalty. In retentionist countries, the debate is sometimes revived when a miscarriage of justice has occurred, though this tends to cause legislative efforts to improve the judicial process rather than to abolish the death penalty.
In the U.S., surveys have long shown a majority in favour of capital punishment. An ABC News survey in July 2006 found 65 percent in favour of capital punishment, consistent with other polling since 2000. About half the American public says the death penalty is not imposed frequently enough and 60 percent believe it is applied fairly, according to a Gallup poll from May 2006. Yet surveys also show the public is more divided when asked to choose between the death penalty and life without parole, or when dealing with juvenile offenders. Roughly six in 10 tell Gallup they do not believe capital punishment deters murder and majorities believe at least one innocent person has been executed in the past five years.

4.2 Arguments for Capital Punishment

- Retribution or justice
- Deterrence
- Rehabilitation
- Prevention of re-offending
- Closure and vindication
- Incentive for helping the police
- A Japanese argument

**Retribution or Justice**

First a reminder of the basics of retribution and punishment:

- all guilty people deserve to be punished
- only guilty people deserve to be punished
- guilty people deserve to be punished in proportion to the severity of their crime

This argument states that real justice requires people to suffer for their wrongdoing, and to suffer in a way appropriate for the crime. Each criminal should get what their crime deserves and in the case of a murderer what their crime deserves is death.

The measure of punishment in a given case must depend upon the atrocity of the crime, the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime.

(Justices A.S. Anand and N.P. Singh, Supreme Court of India, in the case of Dhananjoy Chatterjee).

Many people find that this argument fits with their inherent sense of justice. It's often supported with the argument "An eye for an eye". But to argue like that demonstrates a complete misunderstanding of what that Old Testament phrase actually means. In fact the Old Testament meaning of "an eye for an eye" is that only the guilty should be punished, and they should be punished neither too leniently nor too severely.

**Capital Punishment and Deterrence**

Is capital punishment a deterrent to crime? At the outset, we should acknowledge that the answer to this question should not change our perspective on this issue. Although it is an important question, it should not be the basis for our belief. A Christian's belief in capital punishment should be based upon what the Bible teaches not on a pragmatic assessment of whether or not capital punishment deters crime.
That being said, however, we should try to assess the effectiveness of capital punishment. Opponents of capital punishment argue that it is not a deterrent, because in some states where capital punishment is allowed the crime rate goes up. Should we therefore conclude that capital punishment is not a deterrent?

First, we should recognize that crime rates have been increasing for some time. The United States is becoming a violent society as its social and moral fabric breaks down. So the increase in the crime rate is most likely due to many other factors and cannot be correlated with a death penalty that has been implemented sparingly and sporadically.

Second, there is some evidence that capital punishment is a deterrent. And even if we are not absolutely sure of its deterrent effect, the death penalty should be implemented. If it is a deterrent, then implementing capital punishment certainly will save lives. If it is not, then we still will have followed biblical injunctions and put convicted murderers to death.

In a sense, opponents of capital punishment who argue that it is not a deterrent are willing to give the benefit of the doubt to the criminal rather than to the victim. The poet Hyman Barshay put it this way:

The death penalty is a warning, just like a lighthouse throwing its beams out to sea. We hear about shipwrecks, but we do not hear about the ships the lighthouse guides safely on their way. We do not have proof of the number of ships it saves, but we do not tear the lighthouse down.”(1)

If capital punishment is even a potential deterrent, that is a significant enough social reason to implement it.

Statistical analysis by Dr. Isaac Ehrlich at the University of Chicago suggests that capital punishment is a deterrent.(2) Although his conclusions were vigorously challenged, further cross-sectional analysis has confirmed his conclusions.(3) His research has shown that if the death penalty is used in a consistent way, it may deter as many as eight murders for every execution carried out. If these numbers are indeed accurate, it demonstrates that capital punishment could be a significant deterrent to crime in our society.

Certainly capital punishment will not deter all crime. Psychotic and deranged killers, members of organized crime, and street gangs will no doubt kill whether capital punishment is implemented or not. A person who is irrational or wants to commit a murder will do so whether capital punishment exists or not. But social statistics as well as logic suggest that rational people will be deterred from murder because capital punishment is part of the criminal code.

"If we execute murderers and there is in fact no deterrent effect, we have killed a bunch of murderers. If we fail to execute murderers, and doing so would in fact have deterred other murders, we have allowed the killing of a bunch of innocent victims. I would much rather risk the former. This, to me, is not a tough call."

Deterrence

Capital punishment is justified because by executing convicted murderers we would-be deter murderers from killing people.
The arguments against deterrence

- The statistical evidence doesn't confirm that deterrence works (but it doesn't show that deterrence doesn't work either)
- Some of those executed may not have been capable of being deterred because of mental illness or defect
- Some capital crimes are committed in such an emotional state that the perpetrator did not think about the possible consequences
- No-one knows whether the death penalty deters more than life imprisonment

Deterrence is most effective when the punishment happens soon after the crime - to make an analogy, a child learns not to put their finger in the fire, because the consequence is instant pain. The more the legal process distances the punishment from the crime - either in time, or certainty - the less effective a deterrent the punishment will probably be.

Cardinal Avery Dulles has pointed out another problem with the deterrence argument. Executions, especially where they are painful, humiliating, and public, may create a sense of horror that would prevent others from being tempted to commit similar crimes...

...In our day death is usually administered in private by relatively painless means, such as injections of drugs, and to that extent it may be less effective as a deterrent. Sociological evidence on the deterrent effect of the death penalty as currently practiced is ambiguous, conflicting, and far from probative.

Avery Cardinal Dulles, Catholicism and Capital Punishment, First Things 2001

Some proponents of capital punishment argue that capital punishment is beneficial even if it has no deterrent effect.

If we execute murderers and there is in fact no deterrent effect, we have killed a bunch of murderers. If we fail to execute murderers, and doing so would in fact have deterred other murders, we have allowed the killing of a bunch of innocent victims. I would much rather risk the former. This, to me, is not a tough call. John McAdams: Marquette University, Department of Political Science

Rehabilitation

Of course capital punishment doesn't rehabilitate the prisoner and return them to society. But there are many examples of persons condemned to death taking the opportunity of the time before execution to repent, express remorse, and very often experience profound spiritual rehabilitation.

Thomas Aquinas noted that by accepting the punishment of death, the offender was able to expiate his evil deeds and so escape punishment in the next life.

This is not an argument in favour of capital punishment, but it demonstrates that the death penalty can lead to some forms of rehabilitation.
Prevention of re-offending

It is undeniable that those who are executed cannot commit further crimes.

Many people don't think that this is sufficient justification for taking human life, and argue that there are other ways to ensure the offenders do not re-offend, such as imprisonment for life without possibility of parole.

Although there have been cases of persons escaping from prison and killing again, these are extremely rare.

But some people don't believe that life imprisonment without parole protects society adequately. The offender may no longer be a danger to the public, but he remains a danger to prison staff and other inmates. Execution would remove that danger.

Closure and vindication

It is often argued that the death penalty provides closure for victims' families.

This is a rather flimsy argument, because every family reacts differently. As some families do not feel that another death will provide closure, the argument doesn't provide a justification for capital punishment as a whole.

Incentive for helping the police

Plea bargaining is used in most countries. It's the process through which a criminal gets a reduced sentence in exchange for providing help to the police.

Where the possible sentence is death, the prisoner has the strongest possible incentive to try to get their sentence reduced, even to life imprisonment without possibility of parole, and it's argued that capital punishment therefore gives a useful tool to the police.

This is a very feeble justification for capital punishment, and is rather similar to arguments that torture is justified because it would be a useful police tool.

Value of human life: "It is by exacting the highest penalty for the taking of human life that we affirm the highest value of human life." (Edward Koch).

Cost: Once a convicted murder is executed and buried, there are no further maintenance costs to the state. This appears to be invalid; the cost to the state paying for multiple appeals is greater than the cost of imprisoning an inmate.

Public safety: Once a convicted murderer is executed, there is no chance that he will break out of jail and kill or injure someone.
4.3 Arguments against Capital Punishment

- Murder by the state
- Value of human life
- The right to live
- Execution of the innocent
- Retribution is wrong
- Deterrence
- It brutalises society
- It's too expensive
- People not responsible for their acts
- Unfair application
- Discrimination
- Cruel, inhumane or degrading
- It's unnecessary
- Free will

Murder by the state
One objection to capital punishment is that the government is itself committing murder.

The value of human life

Everyone thinks human life is valuable. Some of those against capital punishment believe that human life is so valuable that even the worst murderers should not be deprived of the value of their lives.

They believe that the value of the offender's life cannot be destroyed by the offender's bad conduct - even if they have killed someone.

Some abolitionists don't go that far. They say that life should be preserved unless there is a very good reason not to, and that the those who are in favour of capital punishment are the ones who have to justify their position.

The right to live

Everyone has an inalienable human right to life, even those who commit murder; sentencing a person to death and executing them violates that right.

This is very similar to the 'value of life' argument, but approached from the perspective of human rights.

The counter-argument is that a person can, by their actions, forfeit human rights, and that murderers forfeit their right to life.

Another example will make this clear - a person forfeits their right to life if they start a murderous attack and the only way the victim can save their own life is by killing the attacker. The medieval philosopher and theologian Thomas Aquinas made this point very clearly:

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14 See-article-27 of the Constitution of the people’s republic of Bangladesh,1972
Therefore if any man is dangerous to the community and is subverting it by some sin, the treatment to be commended is his execution in order to preserve the common good... Therefore to kill a man who retains his natural worthiness is intrinsically evil, although it may be justifiable to kill a sinner just as it is to kill a beast, for, as Aristotle points out, an evil man is worse than a beast and more harmful. Thomas Aquinas, Summa theologiae.

Aquinas is saying that certain contexts change a bad act (killing) into a good act (killing to repair the violation of justice done by the person killed, and killing a person who has forfeited their natural worthiness by killing).

Execution of the innocent

The most common and most cogent argument against capital punishment is that sooner or later, innocent people will get killed, because of mistakes or flaws in the justice system.

Witnesses, (where they are part of the process), prosecutors and jurors can all make mistakes. When this is coupled with flaws in the system it is inevitable that innocent people will be convicted of crimes. Where capital punishment is used such mistakes cannot be put right.

The death penalty legitimizes an irreversible act of violence by the state and will inevitably claim innocent victims. As long as human justice remains fallible, the risk of executing the innocent can never be eliminated. (Amnesty International)

There is ample evidence that such mistakes are possible - in the USA, 116 people sentenced to death have been found innocent since 1973 and released from death row. The average time on death row before these exonerations was 9 years.

Things were made worse in the USA when the Supreme Court refused to hold explicitly that the execution of a defendant in the face of significant evidence of innocence would be unconstitutional [Herrera v. Collins, 560 U.S. 390 (1993)]. However many US lawyers believe that in practice the court would not permit an execution in a case demonstrating persuasive evidence of "actual innocence".

The continuous threat of execution makes the ordeal of those wrongly convicted particularly horrible.

Capital punishment doesn't deter

The death penalty doesn't seem to deter people from committing serious violent crimes. The thing that deters is the likelihood of being caught and punished.

The general consensus among social scientists is that the deterrent effect of the death penalty is at best unproven.

In 1988 a survey was conducted for the UN to determine the relation between the death penalty and homicide rates. This was then updated in 1996. It concluded:

...research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis.
The key to real and true deterrence is to increase the likelihood of detection, arrest and conviction. The death penalty is a harsh punishment, but it is not harsh on crime.

Amnesty International\footnote{Founded in London in 1961, Amnesty International is a Nobel Prize-winning grassroots activist organization with over 1.8 million members worldwide. Amnesty International undertakes research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights.}

NB: It's actually impossible to test the deterrent effect of a punishment in a rigorous way, as to do so would require knowing how many murders would have been committed in a particular state if the law had been different during the same time period.

Discrimination
Many people oppose capital punishment because they feel it is discriminatory. The charge is somewhat curious since most of the criminals that have been executed in the last decade are white rather than black. Nevertheless, a higher percentage of ethnic minorities (African-American, Hispanic-American) are on death row. So is this a significant argument against capital punishment?

First, we should note that much of the evidence for discrimination is circumstantial. Just because there is a higher percentage of a particular ethnic group does not, in and of itself, constitute discrimination. A high percentage of whites playing professional ice hockey or a high percentage of blacks playing professional basketball does not necessarily mean that discrimination has taken place. We need to look beneath the allegation and see if true discrimination is taking place.

Second, we can and should acknowledge that some discrimination does take place in the criminal justice system. Discrimination takes place not only on the basis of race, but on the basis of wealth. Wealthy defendants can hire a battery of legal experts to defend themselves, while poor defendants must rely on a court-appointed public attorney.

Even if we acknowledge that there is some evidence of discrimination in the criminal justice system, does it likewise hold that there is discrimination with regard to capital punishment? The U.S. Solicitor General, in his amicus brief for the case Gregg vs. Georgia, argued that sophisticated sociological studies demonstrated that capital punishment showed no evidence of racial discrimination. These studies compared the number of crimes committed with the number that went to trial and the number of guilty verdicts rendered and found that guilty verdicts were consistent across racial boundaries.

But even if we find evidence for discrimination in the criminal justice system, notice that this is not really an argument against capital punishment. It is a compelling argument for reform of the criminal justice system. It is an argument for implementing capital punishment carefully.

We may conclude that we will only use the death penalty in cases where certainty exists (e.g., eyewitness accounts, videotape evidence). But discrimination in the criminal justice system is not truly an argument against capital punishment. At its best, it is an argument for its careful implementation.
In fact, most of the social and philosophical arguments against capital punishment are really not arguments against it at all. These arguments are really arguments for improving the criminal justice system. If discrimination is taking place and guilty people are escaping penalty, then that is an argument for extending the penalty, not doing away with it. Furthermore, opponents of capital punishment candidly admit that they would oppose the death penalty even if it were an effective deterrent. So while these are important social and political issues to consider, they are not sufficient justification for the abolition of the death penalty.

Deterrence is a morally flawed concept

Even if capital punishment did act as a deterrent, is it acceptable for someone to pay for the predicted future crimes of others?

Some people argue that one may as well punish innocent people; it will have the same effect.

This isn't true - if people are randomly picked up off the street and punished as scapegoats the only consequence is likely to be that the public will be frightened to go out.

To make a scapegoat scheme effective it would be necessary to go through the appearance of a legitimate legal process and to present evidence which convinced the public that the person being punished deserved their punishment.

While some societies have operated their legal systems on the basis of fictional evidence and confessions extracted by torture, the ethical objections to such a system are sufficient to render the argument in the second paragraph pointless.

Capital punishment brutalises society

Brutalising individuals

Statistics show that the death penalty leads to a brutalisation of society and an increase in murder rate. In the USA, more murders take place in states where capital punishment is allowed. In 2003, the murder rate in states where the death penalty has been abolished was 4.10 per cent per 100,000 people. In states where the death penalty is used, the figure was 5.91 per cent. These calculations are based on figures from the FBI. The gap between death penalty states and non-death penalty states has risen considerably from 4 per cent difference in 1990 to 44 per cent in 2003.

Disturbed individuals may be angered and thus more likely to commit murder.

It is also linked to increased number of police officers murdered.

Brutalising the state

Capital punishment may brutalise society in a different and even more fundamental way, one that has implications for the state's relationship with all citizens.
...the state's power deliberately to destroy innocuous (though guilty) life is a manifestation of the hidden wish that the state be allowed to do anything it pleases with life. George Kateb, The Inner Ocean 1992

Brutalising the law

Capital punishment is said to produce an unacceptable link between the law and violence.

But in many ways the law is inevitably linked with violence - it punishes violent crimes, and it uses punishments that 'violently' restrict human freedoms. And philosophically the law is always involved with violence in that its function includes preserving an ordered society from violent events.

Nonetheless a strong case can be made that legal violence is clearly different from criminal violence, and that when it is used it is used in a way that everyone can see is fair and logical.

Capital punishment 'lowers the tone' of society

Civilised societies do not tolerate torture16, even if it can be shown that torture may deter, or produce other good effects.

In the same way many people feel that the death penalty is an inappropriate for a modern civilised society to respond to even the most dreadful crimes.

The murder that is depicted as a horrible crime is repeated in cold blood, remorselessly. Beccaria, C. de, Traité des Délits et des Peines, 1764

Because most countries - but not all - do not execute people publicly, capital punishment is not a degrading public spectacle. But it is still a media circus, receiving great publicity, so that the public are well aware of what is being done on their behalf.

However this media circus takes over the spectacle of public execution in teaching the public lessons about justice, retribution, and personal responsibility for one's own actions.

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16 ‘Torture’ is strictly prohibited in national and international law. Article-35(5) of the constitution of Bangladesh states that ‘No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.’ There is an international Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1). Article-1 states that "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
Capital punishment is too expensive

In the USA capital punishment costs a great deal. For example, the cost of convicting and executing Timothy McVeigh for the Oklahoma City Bombing was over $13 million. In New York, since the death penalty was reinstated in 1995, costs for each person condemned to death were approximately $23 million. In countries with a less costly and lengthy appeals procedure capital punishment seems like a much cheaper option than long-term imprisonment.

Counter-arguments

Those in favour of capital punishment counter with these two arguments:

- It is a fallacy that capital punishment costs more than life without parole
- Justice cannot be thought of in financial terms

Capital punishment is used on people not responsible for their acts

This is not an argument against capital punishment itself, but against applying it wrongly.

Some countries, including the USA, have executed people proven to be insane. It's generally accepted that people should not be punished for their actions unless they have a guilty mind - which requires them to know what they are doing and that it's wrong. Therefore, people who are insane should not be convicted, let alone executed. This doesn't prevent insane people who have done terrible things being confined in secure mental institutions, but this is done for public safety, not to punish the insane person. To put it more formally: it is wrong to impose capital punishment on those who have at best a marginal capacity for deliberation and for moral agency. A more difficult moral problem arises in the case of offenders who were sane at the time of their crime and trial but who develop signs of insanity before execution.

Capital punishment is applied unfairly

There has been much concern in the USA that flaws in the judicial system make capital punishment unfair. One US Supreme Court Justice (who had originally supported the death penalty) eventually came to the conclusion that capital punishment was bound to damage the cause of justice:

*The death penalty remains fraught with arbitrariness, discrimination, caprice, and mistake ... Experience has taught us that the constitutional goal of eliminating arbitrariness and discrimination from the administration of death ... can never be achieved without compromising an equally essential component of fundamental fairness - individualized sentencing.*

(Justice Harry Blackmun, United States Supreme Court, 1994)

Jurors

Jurors in many US death penalty cases must be 'death eligible'. This means the prospective juror must be willing to convict the accused knowing that a sentence of death is a possibility.
This results in a jury biased in favour of the death penalty, since no one who opposes the death penalty is likely to be accepted as a juror.

Lawyers

There's much concern in the USA that the legal system doesn't always provide poor accused people with good lawyers. Out of all offenders who are sentenced to death, three quarters of those who are allocated a legal aid lawyer can expect execution, a figure that drops to a quarter if the defendant could afford to pay for a lawyer.

Capital punishment is cruel, inhumane, or degrading

Regardless of the moral status of capital punishment, some argue that all ways of executing people cause so much suffering to the condemned person that they amount to torture and are wrong. Many methods of execution are quite obviously likely to cause enormous suffering, such as execution by lethal gas, electrocution or strangulation.

Other methods have been abandoned because they were thought to be barbaric, or because they forced the executioner to be too 'hands-on'. These include firing squads and beheading.

Lethal injection

Many countries that use capital punishment have now adopted lethal injection, because it's thought to be less cruel for the offender and less brutalising for the executioner.

Those against capital punishment believe this method has serious moral flaws and should be abandoned.

The first flaw is that it requires medical personnel being directly involved in killing (rather than just checking that the execution has terminated life). This is a fundamental contravention of medical ethics.

The second flaw is that recent research (April 2005) has shown that lethal injection is not nearly as 'humane' as had been thought. Post mortem findings indicate that levels of anaesthetic found in offenders were consistent with wakefulness and the ability to experience pain.

Unfairness: The mentally ill, poor, males, and racial minorities are over-represented among those executed. One pilot study of over 2 dozen convicted criminals on death row found that all had been so seriously abused during childhood that they probably all suffered from brain damage. Women convicted of murder are almost never executed; that is a penalty that is almost entirely reserved for men. A 1986 study in Georgia showed that persons who killed "whites were four times more likely to be sentenced to death than convicted killers of non-whites." The Texas Civil Rights Project issued a report in 2000-SEP which was critical of the

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17 Lawyers in Bangladesh are now known as Pleaders or Advocates or Barristers. In the text book vakils or solicitors or attorneys are sometimes mentioned. In the Muslim period there were mufti, pandit, mohtasib or mohtasib-e-mumalik were working like a lawyer. The public prosecutor, Government pleader, attorney generals etc are Government lawyer. In the Appellate Division no case can be filed without the signature of the Advocate-on-record.
justice system in Texas. They made the following criticisms which could probably apply to most of the states in the U.S. which still execute prisoners:

- The defense lawyers are often incompetent. Judges sometimes appoint friends or political associates. Other times, no competent lawyer is willing to accept the case because of the poor compensation paid.
- District attorneys are given "unrestricted discretion" in deciding whether to seek the death penalty. Poor people and members of minority groups are more likely to be targeted because of prejudice and bigotry.
- Jurors who may support the death penalty, but have reservation about its use, are eliminated from jury duty.
- Jurors are often not given the option of a life-without-parole sentence in murder cases.
- The appeal process has "burdensome, if not impossible, procedures." The process seems designed to speed cases along rather than grant justice.

Capital punishment is unnecessary

This is really more of a political argument than an ethical one. It's based on the political principle that a state should fulfil its obligations in the least invasive, harmful and restrictive way possible.

- The state does have an obligation to punish crime, as a means to preserve an orderly and contented society, but it should do so in the least harmful way possible
- Capital punishment is the most harmful punishment available, so the state should only use it if no less harmful punishment is suitable
- Other punishments will always enable the state to fulfil its objective of punishing crime appropriately
- Therefore the state should not use capital punishment

Most people will not want to argue with clauses 1 and 2, so this structure does have the benefit of focussing attention on the real point of contention - the usefulness of non-capital punishments in the case of murder.

One way of settling the issue is to see whether states that don't use capital punishment have been able to find other punishments that enable the state to punish murderers in such a way as to preserve an orderly and contented society. If such states exist then capital punishment is unnecessary and should be abolished as overly harmful.

Capital punishment and free will

The idea that we must be punished for any act of wrongdoing, whatever its nature, relies upon a belief in human free will and a person's ability to be responsible for their own actions.

If one does not believe in free will, the question of whether it is moral to carry out any kind of punishment (and conversely reward) arises.

Arthur Koestler and Clarence Darrow argued that human beings never act freely and thus should not be punished for even the most horrific crimes.
The latter went on to argue for the abolition of punishment altogether, an idea which most people would find problematic.

Does the death penalty deter homicides?

People murder for a variety of reasons and under many different situations e.g.:

- during domestic disputes, when passions are inflamed.
- under the influence of alcohol or other drugs, when the perpetrator is not in rational control.
- hit-men doing contract killings; they typically never expect to be arrested.
- psychopaths and other mentally ill individuals who have little regard for human life and who are unable to accept responsibility for their actions
- self-destructive individuals who believe that they deserve to die and want to be arrested and executed.
- brain-damaged individuals, who experience periods of rage, and occasionally kill.

With the exception of professional hit-men, very few people are in a rational frame of mind when they kill others. It may be hopeless to expect any form of punishment to act as a deterrent.

There are some indicators that the death penalty has no effect:

- From 1976 to 1996, the number of executions per year in the United States has increased from 0 to just under 60. The homicide rate per 100,000 population has remained constant at just under 10. 3
- Criminologists who belong to the American Society of Criminology, the Academy of Criminal Justice Sciences, and the Law and Society Association were polled. Over 80% believe that our current knowledge does not indicate a deterrent effect. 75% felt that increasing the numbers of executions or decreasing time spent on death row would not result in a deterrence. 4
- 67% of U.S. police chiefs do not believe that the death penalty significantly reduces the numbers of murders. 5

- In 1967, a study by Thorsten Sellin 6 compared the homicide rates between neighboring states in which some had the death penalty, and others did not. Sellin also compared murder rates before and after states either abolished or reinstated the death penalty. He found no statistically valid difference in rates in both cases. These results were summarized in a book by J.Q. Wilson. 7 The study might have been affected by the numbers of executions at the time; they had dropped to near zero in the U.S., so that even those states with death penalty laws on the books were not exercising them fully.
- A 1998 research study conducted for the United Nations concluded: "This research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis." 8

There are some indicators that it acts as a deterrent:
There are some indicators that it acts as an anti-deterrent i.e. the death penalty actually increases the homicide rate:

- Police chiefs ranked the death penalty as least effective among 7 methods of reducing the homicide rate. 31% viewed reducing the usage of drugs as the most effective; 17% with a better economy and more jobs, 16% by simplifying court rules; 15% with longer prison sentences.....1% by expanding the use of the death penalty.
- One writer disagrees with the belief of most sociologists that the death penalty does not deter murderers. Differing cultures in various states may produce differing homicide rates. And those states with the higher murder rates might also be those which retain the death penalty. He refers to:
  - A study by Isaac Ehrlich which found that the murder rate responded to changes in the likelihood of execution. He concluded that 7 or 8 murders were prevented by each execution from 1933 to 1967. 10,11
  - A study by Kenneth Wolpin which showed that each execution, on average, reduced the number of murders in England by 4. 12
  - Other articles and books are: 13,14,15

There are some indicators that it acts as an anti-deterrent i.e. the death penalty actually increases the homicide rate:

- In 1996, those states which had the death penalty had an average murder rate of 7.1 per 100,000 population; those states which do not execute people had a homicide rate of 3.6. 3
- Comparing adjacent states where one state has the death penalty and the other does not, frequently shows that the states with capital punishment have a much higher homicide rate.
  - A report of the Bureau of Justice Statistics showed that during 1996, Southern states, where about 81% of the executions are performed, have an average murder rate of 9 per 100,000 population. States in the Northeast are responsible for 1% of the executions and have a murder rate of 5.4 3
  - A 1980 study of homicides in New York found that the average numbers of murders increased in the month following an execution 16
  - A 1995 study of the annual percentage increases in homicide rates in California showed that murders increased 10% a year during 1952 to 1967 when the state was executing people. When the state performed no executions (1968-1991) the average rate of increase was less (4.8%)
  - Canada's homicide rate has dropped 27% since the death penalty was abolished in that country (for ordinary crimes) in 1976. For many years prior to 1976, the federal government had converted each death sentence to life imprisonment.
  - The FBI Uniform Crime Reports Division publication Crime in the US for 1995 reports that there were 4.9 murders per 100,000 people in states that have abolished the death penalty, compared with 9.2 murders in those states which still have the death penalty. "In no state has the number of murders diminished after legalizing the death penalty." 2
4.4 Conclusion

Under the influence of the European Enlightenment, in the latter part of the 18th century there began a movement to limit the scope of capital punishment. Until that time a very wide range of offenses, including even common theft, were punishable by death—though the punishment was not always enforced, in part because juries tended to acquit defendants against the evidence in minor cases. In 1794 the U.S. state of Pennsylvania became the first jurisdiction to restrict the death penalty to first-degree murder, and in 1846 the state of Michigan abolished capital punishment for all murders and other common crimes. In 1863 Venezuela became the first country to abolish capital punishment for all crimes, including serious offenses against the state (e.g., treason and military offenses in time of war). Portugal was the first European country to abolish the death penalty, doing so in 1867; by the early 20th century several other countries, including The Netherlands, Norway, Sweden, Denmark, and Italy, had followed suit (though it was reintroduced in Italy under the fascist regime of Benito Mussolini). By the mid-1960s some 25 countries had abolished the death penalty for murder, though only about half of them also had abolished it for offenses against the state or the military code. For example, Britain abolished capital punishment for murder in 1965, but treason, piracy, and military crimes remained capital offenses until 1998.

During the last third of the 20th century, the number of abolitionist countries increased more than threefold. These countries, together with those that are “de facto” abolitionist—i.e., those in which capital punishment is legal but not exercised—now represent more than half the countries of the world. One reason for the significant increase in the number of abolitionist states was that the abolition movement was successful in making capital punishment an international human rights issue, whereas formerly it had been regarded as solely an internal matter for the countries concerned. In 1971 the United Nations General Assembly passed a resolution that, “in order fully to guarantee the right to life, provided for in...the Universal Declaration of Human Rights,” called for restricting the number of offenses for which the death penalty could be imposed, with a view toward abolishing it altogether. This resolution was reaffirmed by the General Assembly in 1977. Optional protocols to the European Convention on Human Rights (1983) and to the International Covenant on Civil and Political Rights (1989) have been established, under which countries party to the convention and the covenant undertake not to carry out executions. The Council of Europe (1994) and the EU (1998) established as a condition of membership in their organizations the requirement that prospective member countries suspend executions and commit themselves to abolition. This decision had a remarkable impact on the countries of central and eastern Europe, prompting several of them—e.g., the Czech Republic, Hungary, Romania, Slovakia, and Slovenia—to abolish capital punishment. In the 1990s many African countries—including Angola, Djibouti, Mozambique, and Namibia—abolished capital punishment, though most African countries retained it. In South Africa, which formerly had one of the world's highest execution rates, capital punishment was outlawed in 1995 by the Constitutional Court, which declared that it was incompatible with the prohibition against cruel, inhuman, or degrading punishment and with “a human rights culture.”
CHAPTER FIVE
Capital Punishment: An International Perspective

5.1 Introduction

Amnesty International recorded executions in 22 countries in 2014, the same number as in 2013. At least 607 executions were carried out worldwide, a decrease of almost 22% compared with 2013. As in previous years, this figure does not include the number of people executed in China, where data on the death penalty is treated as a state secret. At least 2,466 people are known to have been sentenced to death in 2014, an increase of 28% compared with 2013. This increase was largely due to sharp spikes in death sentences in Egypt and Nigeria, where courts imposed mass sentences against scores of people in some cases.

An alarming number of countries that used the death penalty in 2014 did so in response to real or perceived threats to state security and public safety posed by terrorism, crime or internal instability. For example, Pakistan lifted a six-year-long moratorium on the execution of civilians in the wake of the horrific Peshawar school attack. The government also pledged to execute hundreds of people on death row who had been convicted on terrorism-related charges. China made use of the death penalty as a tool in the “Strike Hard” campaign, which the authorities characterized as a response to terrorism and violent crime in the Xinjiang Uighur Autonomous Region.

The number of executions recorded in the Middle East and North Africa region decreased by approximately 23% - from 638 in 2013 to 491 in 2014. In the Americas, the USA is the only country that executes, but executions dropped from 39 in 2013 to 35 in 2014, reflecting a steady decline in executions over recent years.

At least 607 executions were carried out worldwide, a decrease of almost 22% compared to the figures recorded for 2013. This figure does not include the number of people who were believed to have been executed in China.

Where Amnesty International receives and is able to verify new information after publication of this report, it updates its figures online at www.amnesty.org/deathpenalty.

5.2 Executions around the World

REPORTED DEATH SENTENCES IN 2014

Afghanistan (12+), Algeria (16+), Bahrain (5), Bangladesh (142+), Barbados (2), Botswana (1), China (+), Congo (Republic of) (3+), Democratic Republic of Congo (DRC) (14+), Egypt (509+), Gambia (1+), Ghana (9), Guyana (1), India (64+), Indonesia (6), Iran (81+), Iraq (38+), Japan (2), Jordan (5), Kenya (26+), Kuwait (7), Lebanon (11+), Lesotho (1+), Libya (1+), Malaysia (38+), Maldives (2), Mali (6+), Mauritania (3), Morocco/Western Sahara (9), Myanmar (1+), Nigeria (659), North Korea (+), Pakistan (231), Palestine (State
of) (4+ Hamas authorities, Gaza), Qatar (2+), Saudi Arabia (44+), Sierra Leone (3), Singapore (3), Somalia (52+: 31+ Somali Federal Government; 11+ Puntland; 10+ Somaliland), South Korea (1), South Sudan (+), Sri Lanka (61+), Sudan (14+), Taiwan (1), Tanzania (91), Thailand (55+), Trinidad and Tobago (2+), Tunisia (2+), Uganda (1), UAE (25), USA (72+), Viet Nam (72+), Yemen (26+), Zambia (13+) and Zimbabwe (10). At least 19,094 people were believed to be under sentence of death worldwide at the end of 2014.

The following methods of executions were used: beheading (Saudi Arabia), hanging (Afghanistan, Bangladesh, Egypt, Iran, Iraq, Japan, Jordan, Malaysia, Pakistan, Palestine, Singapore, Sudan), lethal injection (China, USA, Viet Nam) and shooting (Belarus, China, Equatorial Guinea, North Korea, Palestine, Saudi Arabia, Somalia, Taiwan, UAE, Yemen).

As in previous years, there were no reports of judicial executions carried out by stoning. In UAE one woman was sentenced to death by stoning for committing "adultery" while married. Public executions were carried out in Iran and Saudi Arabia.

The death penalty was imposed or implemented for drug-related offences in a number of countries, including China, Indonesia, Iran, Malaysia, Saudi Arabia, Singapore, Sri Lanka, Thailand, UAE and Viet Nam.

Other capital crimes which did not meet the standard of “most serious crimes” but for which the death penalty was imposed in 2014 included: economic crimes such as corruption (China, North Korea and Viet Nam); armed robbery (DRC); committing "adultery" while married (UAE); rape that resulted in death (Afghanistan); rape committed by repeat rape offenders (India), rape (Saudi Arabia, UAE); kidnapping (Saudi Arabia); torture (Saudi Arabia); “insulting the prophet of Islam” (Iran); blasphemy (Pakistan); “witchcraft” and “sorcery” (Saudi Arabia).

5.3 Abolitionism

The death penalty was briefly banned in China between 747 and 759. In England, a public statement of opposition was included in The Twelve Conclusions of the Lollards, written in 1395. More recent opposition to the death penalty stemmed from the book of the Italian Cesare Beccaria Dei Delitti e Delle Pene ("On Crimes and Punishments"), published in 1764. In this book, Beccaria aimed to demonstrate not only the injustice, but even the futility from the point of view of social welfare, of torture and the death penalty. Influenced by the book, Grand Duke Leopold II of Habsburg, famous enlightened monarch and future Emperor of Austria, abolished the death penalty in the then-independent Granducato di Toscana (Grand Duchy of Tuscany), the first permanent abolition in modern times. On 30 November 1786, after having de facto blocked capital executions (the last was in 1769), Leopold promulgated the reform of the penal code that abolished the death penalty and ordered the destruction of all the instruments for capital execution in his land. In 2000 Tuscany's regional authorities instituted an annual holiday on 30 November to commemorate the event. The event is also commemorated on this day by 300 cities around the world celebrating the Cities for Life Day.

Abolition of the death penalty was not common and was viewed as unnecessary. The Roman Republic went out on a limb and banned capital punishment. In 1849, this made the Roman Republic the first ever to ban capital punishment. However, Venezuela followed suit and in 1863 abolished the death penalty and San Marino did so in 1865. The last execution in San
Marino had taken place in 1468. In Portugal, after two legislative proposals, in 1852 and 1863, the death penalty was abolished in 1867.

In Great Britain, it was abolished (except for cases of treason) in 1971; France abolished it in 1981. Canada abolished it in 1976; Australia 1985. In 1977, the United Nations General Assembly affirmed in a formal resolution that throughout the world, it is desirable to "progressively restrict the number of offenses for which the death penalty might be imposed, with a view to the desirability of abolishing this punishment". [29]

In the United States, the state of Michigan was the first state to ban the death penalty, on March 1, 1847. The 160-year ban on capital punishment has never been repealed. Currently, 12 states of the U.S. and the District of Columbia ban capital punishment.

5.3.1 Countries that have recently abolished the death penalty:

As of the end of 2006, 86 countries no longer have the death penalty. This is a increase from 16 in 1977. Only three industrialized democracies still execute people: Japan, South Korea, and some states in the U.S.

<table>
<thead>
<tr>
<th>Year</th>
<th>Abolished death penalty for all crimes</th>
<th>Abolished death penalty for ordinary crimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976</td>
<td>Portugal</td>
<td>Canada</td>
</tr>
<tr>
<td>1978</td>
<td>Denmark</td>
<td>Spain</td>
</tr>
<tr>
<td>1979</td>
<td>Luxembourg, Nicaragua, Norway</td>
<td>Brazil, Fiji, Peru</td>
</tr>
<tr>
<td>1981</td>
<td>France, Cape Verde</td>
<td></td>
</tr>
<tr>
<td>1982</td>
<td>Netherlands</td>
<td></td>
</tr>
<tr>
<td>1983</td>
<td></td>
<td>Cyprus, El Salvador</td>
</tr>
<tr>
<td>1984</td>
<td></td>
<td>Argentina</td>
</tr>
<tr>
<td>1985</td>
<td>Australia</td>
<td></td>
</tr>
<tr>
<td>1987</td>
<td>Haiti, Liechtenstein, German Democratic Republic</td>
<td></td>
</tr>
<tr>
<td>1988</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1989</td>
<td>Cambodia, New Zealand, Romania, Slovenia</td>
<td></td>
</tr>
<tr>
<td>1990</td>
<td>Andorra, Croatia, Czech &amp; Slovak Federal Republic, Hungary, Ireland, Mozambique, Namibia, São Tomé, Principe</td>
<td>Nepal</td>
</tr>
<tr>
<td>1991</td>
<td>Slovenia, Croatia</td>
<td></td>
</tr>
<tr>
<td>1992</td>
<td>Angola, Switzerland</td>
<td>Paraguay</td>
</tr>
<tr>
<td>1993</td>
<td>Greece, Guinea-Bissau, Hong Kong</td>
<td></td>
</tr>
<tr>
<td>1994</td>
<td>Italy</td>
<td></td>
</tr>
<tr>
<td>Year</td>
<td>Countries</td>
<td>Region</td>
</tr>
<tr>
<td>------</td>
<td>-----------------------------------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>1995</td>
<td>Mauritius, Moldova, Spain</td>
<td>South Africa</td>
</tr>
<tr>
<td>1996</td>
<td>Belgium</td>
<td></td>
</tr>
<tr>
<td>1998</td>
<td>Bulgaria, Lithuania</td>
<td></td>
</tr>
<tr>
<td>1999</td>
<td>Bermuda</td>
<td></td>
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<tr>
<td>2000</td>
<td>Poland</td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>Chile</td>
<td></td>
</tr>
<tr>
<td>2002</td>
<td>Europe (See note), Serbia, Yugoslavia,</td>
<td>Turkey</td>
</tr>
<tr>
<td></td>
<td>Cyprus, Moratorium on executions in the</td>
<td>Philippines</td>
</tr>
<tr>
<td></td>
<td>Turkey</td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>Kenya has an informal moratorium on</td>
<td></td>
</tr>
<tr>
<td></td>
<td>executions.</td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>Turkey</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>Mexico, Liberia</td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>State of New Jersey, Rwanda</td>
<td></td>
</tr>
</tbody>
</table>

Abolitionist and Retentionist Countries

- **Abolitionist for all Crimes**: 91
- **Abolitionist for Ordinary Crimes only**: 11
- **Abolitionist in Practice**: 33
- **Retentionist Countries**: 62

Total Abolitionist in law or practice: 135

Information accurate as of January 11, 2008 (Amnesty International)

Abolitionist for All Crimes
Countries whose laws do not provide for the death penalty for any crime

- Albania
- Andorra
- Angola
- Armenia
- Australia
- Austria
- Azerbaijan
- Belgium
- Bhutan
- Bosnia-Herzegovina
- Bulgaria
- Cambodia
- Canada
- Cape Verde
- Colombia
- Costa Rica
- Côte D’Ivoire
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Djibouti
- Dominican Republic
- Ecuador
- Estonia
- Finland
- France
- Georgia
- Germany
- Greece
- Guinea-Bissau
- Haiti
- Honduras
- Hungary
- Iceland
- Ireland
- Italy
- Kiribati
- Liberia
- Liechtenstein
- Lithuania
- Luxembourg
- Macedonia (former Yugoslav Republic)
- Malta
- Marshall Islands
- Mauritius
- Mexico
- Micronesia (Federated States)
- Moldova
- Monaco
- Montenegro
- Mozambique
- Namibia
- Nepal
- Netherlands
- New Zealand
- Nicaragua
- Niue
- Norway
- Palau
- Paraguay
- Philippines
- Poland
- Portugal
- Romania
- Rwanda
- Samoa
- San Marino
- São Tomé and Príncipe
- Senegal
- Serbia
- Seychelles
- Slovakia
- Slovenia
- Solomon Islands
- South Africa
- Spain
- Sweden
- Switzerland
- Timor-Leste
- Turkey
- Turkmenistan
- Tuvalu
- Ukraine
- United Kingdom
- Uruguay
- Uzbekistan
- Vanuatu
- Vatican City State
- Venezuela

Abolitionist for "Ordinary Crimes" Only

Countries whose laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances

- Argentina
- Bolivia
- Brazil
- Chile
- Cook Islands
- El Salvador
- Fiji
- Israel
- Kyrgyzstan
- Latvia
- Peru

Abolitionist in Practice

Countries which retain the death penalty for ordinary crimes such as murder but can be considered...
abolitionist in practice in that they have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions. The list also includes countries which have made an international commitment not to use the death penalty.

- Algeria
- Benin
- Brunei Darussalam
- Burkina Faso
- Central African Republic
- Congo (Republic)
- Eritrea
- Gabon
- Gambia
- Ghana
- Grenada
- Kenya
- Korea (South)
- Laos
- Madagascar
- Malawi
- Maldives
- Mali
- Mauritania
- Morocco
- Myanmar
- Nauru
- Niger
- Papua new guinea
- Russian Federation
- Sri Lanka
- Suriname
- Swaziland
- Tanzania
- Togo
- Tonga
- Tunisia
- Zambia

Opponents of the death penalty commonly argue that it is an ineffective deterrent. They further argue that it may lead to irreversible miscarriages of justice.\(^\text{11}\)

It is argued by the abolitionists that it violates the criminal’s right to life.

One of the problems with the death penalty is that it is irreversible.\(^\text{12}\)

The death penalty as a method of fighting crime and protecting society does not work. There is no evidence that the death penalty deters crime. According to the FBI crime statistics the murder rate in some states that use the death penalty is almost twice that some of other states that do not execute.\(^\text{13}\)

Death sentence is immoral and discriminatory, and worse, it is unwholesome for the health of the society, it is mean and cruel and vengeful.\(^\text{14}\)

It is uncivilized and barbaric. There is no criminal in nature that kills out of vengeance except for the human animal.

The view of justice Bhagabati was that a humane treatment even of a murderer will enhance the dignity of man and make society more human. The sentence of life imprisonment should be imposed instead of death sentence. He also put emphasis on barbarity and cruelty in death sentence. The civilized goal of criminal justice is the reformation of the criminal and death penalty means the abandonment of this goal for those who suffer it.
5.4 Retentionist Countries

Countries which retain the death penalty for ordinary crimes

- Afghanistan
- Antigua and Barbuda
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belize
- Botswana
- Burundi
- Cameroon
- Chad
- China
- Comoros
- Congo (Democratic Republic)
- Cuba
- Dominica
- Egypt
- Equatorial guinea
- Ethiopia
- Guatemala
- Guinea
- Guyana
- India
- Indonesia
- Iran
- Iraq
- Jamaica
- Japan
- Jordan
- Kazakhstan
- Korea (North)
- Kuwait
- Lebanon
- Lesotho
- Libya
- Malaysia
- Mongolia
- Nigeria
- Oman
- Pakistan
- Palestinian Authority
- Qatar
- Saint Christopher & Nevis
- Saint Lucia
- Saint Vincent & Grenadines
- Saudi Arabia
- Sierra Leone
- Singapore
- Somalia
- Sudan
- Syria
- Taiwan
- Tajikistan
- Thailand
- Trinidad and Tobago
- Uganda
- United Arab Emirates
- United States of America
- Viet Nam
- Yemen
- Zimbabwe

Retentionist’s View:

Supporters of death penalty state that it does deter crime, saves innocent lives by preventing future murders and that the death penalty is a moral imperative since allowing murderers to live while the victims cannot, is a great injustice.\(^7\)

Those who want to retain the sentence of capital punishment argue that there are some offenders who are not only incorrigible but also immensely dangerous to society.\(^8\)

The retentionists support capital punishment on the ground that it has a great deterrent value and commands obedience for law in general public. The believe that the death of the killer is a requirement of justice.\(^9\)

Another argument in favour of capital punishment is that punishment by the state is a substitute for private revenge.\(^10\)
Capital punishment is the way, according to the view of Lord Denning, in which society express its denunciation of the wrongdoer. Some crimes are so outrageous that society insists on adequate punishment for the wrongdoer.

5.5 Overview of the Death Penalty Worldwide in 2007

The use of capital punishment accelerated during 2007 and led to at least 594 executions in 20 countries (up from 518 executions in 19 countries during 2006). These are reported and verified executions, but there will almost certainly have been many more in China (see below) and there may have been unreported ones in Singapore, which nowadays seldom publicises the names of those executed. Details of executions are very hard to verify in some countries because of the official secrecy surrounding them. Amnesty International claims that 1591 people were executed in 2006.

The countries in which verifiable executions took place during 2007 were:

<table>
<thead>
<tr>
<th>Country</th>
<th>Shooting</th>
<th>Hanging</th>
<th>Beheading</th>
<th>Injection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>15</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>America *</td>
<td></td>
<td></td>
<td></td>
<td>42</td>
</tr>
<tr>
<td>Bangladesh</td>
<td></td>
<td>6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belarus</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Botswana</td>
<td></td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>China</td>
<td></td>
<td></td>
<td></td>
<td>13 recorded by either shooting or injection</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indonesia</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iran</td>
<td></td>
<td></td>
<td></td>
<td>265</td>
</tr>
<tr>
<td>Iraq</td>
<td></td>
<td></td>
<td></td>
<td>29</td>
</tr>
<tr>
<td>Japan</td>
<td></td>
<td></td>
<td></td>
<td>9</td>
</tr>
<tr>
<td>Kuwait</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>North Korea</td>
<td>8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pakistan</td>
<td></td>
<td></td>
<td></td>
<td>29+</td>
</tr>
</tbody>
</table>
5.5.1 Methods Used:

**MODES OF EXECUTION**

Historically and still today under certain system of law—the death penalty was applied to a wider range of offences, including robbery or theft, child molestation, and kidnapping. However, there was great divergence as to the modes of execution. The common modes of inflicting death sentence on the offender were crucifixion, drowning, burning, boiling, beheading, throwing before wild beasts, flaying or skinning off alive, hurling the offender from rock, stoning, strangling, amputating, shooting by gun or starving him to death. Hanging the offender till death in public places has been a common mode of putting to an end of life of an offender. These draconic and barbaric methods of punishing criminals to death were justified on the ground that they were the quickest and easiest modes of punishment and at the same time carried with them an element of deterrence and retribution. At present, the common modes of execution of death penalty which are in vogue in different parts of the world are electrocution, guillotine, shooting, gas chamber, hanging, lethal injection etc. The method of hanging has been commonly in use in almost all the countries since ages.

**Recent Practices (2007 onwards)**

Executions by shooting were carried out in Belarus, Indonesia, North Korea, Somalia and Yemen. It is probable that China used shooting during this year. Chinese shootings are carried out by a single bullet to the back of the head and this is probably what is done in Belarus. Indonesia, North Korea and Somalia use conventional firing squads. Yemen lays the prisoner on the ground and a single executioner shoots them with an automatic rifle. Somalia also uses a single executioner with an automatic rifle.

Hanging has become much more widely used during 2007 – at the very least 343 men and 4 women were hanged in 10 countries. These being Bangladesh, Botswana, Iran, Iraq, Japan, Kuwait, Pakistan, Singapore, Sudan and Syria. Singapore does not report executions and the figure above represents only the known one. It is thought that the figure for Pakistan will be

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<td>Saudi Arabia</td>
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significantly higher than 29, probably nearer 80. Public and private hangings took place in Iran, all the rest being in private. With the exception of Iran, the other countries listed gave the prisoner a drop. In Iran hangings are carried out using either a short drop or by hoisting the prisoner into the air (used at least for public hangings).

Saudi Arabia publicly beheaded 153 men and 3 women for murder and drug offences during 2007, the highest number ever recorded there. Saudi Arabia is the only country that normally uses beheading.

Lethal injection was used for 41 executions in America, but has been suspended from the end of September 2007, waiting a decision by the Supreme Court in January 2008 on whether the drugs used may cause the prisoner severe suffering which would be against the Constitution. It used in China, although no figures are available and where executions are reported, the method used generally is not. Guatemala, Taiwan and Thailand, the other three countries that use lethal injection, carried out no executions in 2007.

One man in the American state of Tennessee elected to die in the electric chair. (Daryl Holton 12/09/2007) Once again there were no executions by lethal gas reported in 2007. There were no confirmed executions by stoning, although it is possible that two were carried out in Iran.

5.5.2. Women:
Seven women have been put to death during the year, 4 by hanging in Iran and 3 by beheading in Saudi Arabia.

5.5.3. Juveniles:
At least 1 juvenile has been hanged in Iran during 2007 for a crime he allegedly committed when he was 13.

5.5.4. Death penalty developments during 2007:
In July 2007 Rwanda abolished the death penalty. Bahrain carried out its first executions for nearly 11 years in 2006 and local human rights groups are pressing for abolition. The US state of New Jersey abolished the death penalty on the 17th of December 2007, having not had an execution since 1963. Pakistan has had a significant upsurge in hangings during the year, but still has a huge death row population, estimated at over 3600.

5.6 The Standpoint of the International Organizations

5.6.1. The United Nations
The United Nations introduced a resolution during the General Assembly's 62nd session in 2007 calling for a universal ban. The approval of a draft resolution by the Assembly’s third committee, which deals with human rights issues, voted 99 to 52, with 33 abstentions, in favour of the resolution on November 15, 2007 and was put to a vote in the General Assembly on December 18. It passed a non-binding resolution (by a 104 to 54 vote, with 29
(abstentions) by asking its member states for "a moratorium on executions with a view to abolishing the death penalty".[40]

Article 2 of the Charter of Fundamental Rights of the European Union affirms the prohibition on capital punishment in the EU

A number of regional conventions prohibit the death penalty, most notably, the Sixth Protocol (abolition in time of peace) and the Thirteenth Protocol (abolition in all circumstances) to the European Convention on Human Rights. The same is also stated under the Second Protocol in the American Convention on Human Rights, which, however has not been ratified by all countries in the Americas, most notably Canada and the United States. Most relevant operative international treaties do not require its prohibition for cases of serious crime, most notably, the International Covenant on Civil and Political Rights. This instead has, in common with several other treaties, an optional protocol prohibiting capital punishment and promoting its wider abolition.[41]

Several international organisations have made the abolition of the death penalty (during time of peace) a requirement of membership, most notably the European Union (EU) and the Council of Europe. The EU and the Council of Europe are willing to accept a moratorium as an interim measure. Thus, while Russia is a member of the Council of Europe, and practices the death penalty in law, it has not made public use of it since becoming a member of the Council. Other states, while having abolished de jure the death penalty in time of peace and de facto in all circumstances, have not ratified Protocol no.13 yet and therefore have no international obligation to refrain from using the death penalty in time of war or imminent threat of war (Armenia, Italy, Latvia, Poland and Spain[42]). France is the most recent to ratify it (October 10, 2007) with the effective date of February 1, 2008.[43][44]

Turkey has recently, as a move towards EU membership, undergone a reform of its legal system. Previously there was a de facto moratorium on death penalty in Turkey as the last execution took place in 1984. The death penalty was removed from peacetime law in August 2002, and in May 2004 Turkey amended its constitution in order to remove capital punishment in all circumstances. It ratified Protocol no. 13 to the European Convention on Human Rights in February 2006. As a result, Europe is a continent free of the death penalty in practice (all states but Russia, which has entered a moratorium, having ratified the Sixth Protocol to the European Convention on Human Rights), with the sole exception of Belarus, which is not a member of the Council of Europe. The Parliamentary Assembly of the Council of Europe has been lobbying for Council of Europe observer states who practice the death penalty, namely the U.S. and Japan, to abolish it or lose their observer status. In addition to banning capital punishment for EU member states, the EU has also banned detainee transfers in cases where the receiving party may seek the death penalty.[citation needed]

Among non-governmental organisations, Amnesty International and Human Rights Watch are noted for their opposition to capital punishment.

The U.N. General Assembly called for a moratorium on the death penalty as a step toward abolishing all executions, a move hailed by opponents of capital punishment and criticized by supporters including the U.S., Iran and China. The vote Tuesday in the 192-member world body was 104-54 with 29 abstentions.
The resolution is not legally binding but it carries moral weight and reflects the majority view of world opinion. It states that the use of the death penalty "undermines human dignity" while a moratorium "contributes to the enhancement and progressive development of human rights."

Two previous attempts to have the General Assembly adopt a moratorium on the death penalty — in 1994 and 1999 — failed. But Amnesty International, which campaigned for a resolution, said that since then the number of countries that have abolished the death penalty in law or practice has risen.

U.N. Secretary-General Ban Ki-moon welcomed the adoption of the resolution, calling it "a bold step by the international community."

"I am particularly encouraged by the support expressed for this initiative from many diverse regions of the world. This is further evidence of a trend towards ultimately abolishing the death penalty," he said.

The vote capped a heated debate in the General Assembly's human rights committee that continued before and after Tuesday's final vote.

The resolution was co-sponsored by European Union states and 60 other countries, and spearheaded by Italy whose foreign minister, Massimo D'Alema, hailed its adoption as "an important step" to abolish capital punishment.

"The campaign should continue," he told reporters after the vote. "We call on each member state to implement the resolution."

But China's representative said the result was "achieved through pressure" and the vote reflected the level of disagreement in the international community. She said the issue was a question of judicial process — not human rights — and every country should be able to decide without interference.

Egypt, Malaysia, Bangladesh, Syria and other Muslim countries also said the U.N. should not interfere in the sovereignty of states.

According to Hands Off Cain, a Rome-based anti-death penalty group, more people were put to death last year — 5,628 — than in either of the previous two years, with China alone accounting for 5,000 executions. Iran ranks second with at least 215 people put to death.

The vote saw the United States taking the unusual step of siding with countries such as Iran, China and Syria in opposition to the resolution — and against its usual European allies as well as Israel.

Supporters of the death penalty stressed that the resolution would not interfere with their laws and practices, and several accused the U.N. of trying to interfere with their sovereignty.

The move comes amid a heated debate over the death penalty in the United States.

The U.S. Supreme Court is scheduled to hear a case that could determine the constitutionality of the lethal injection — an issue that has been tackled in various U.S. courts over the past
year. Also, the governor of the U.S. state of New Jersey on Monday signed into law a 
measure abolishing the death penalty, making his the first U.S. state in more than four 
decades to reject capital punishment.

The assembly's resolution calls on those countries that still allow capital punishment to 
respect international standards that safeguard the rights of condemned inmates and to 
"establish a moratorium on executions with a view to abolishing the death penalty."

5.6.2. Amnesty International

In a relatively new report, Amnesty International revealed that at least 1,200 people were 
executed in 2007 and expressed deep concern that many more were killed by the state, in 
secret, in countries including China, Mongolia and Viet Nam.

According to the report Death Sentences and Executions in 2007 at least 1,252 people were 
executed in 24 countries and at least 3,347 people were sentenced to death in 51 countries. 
Up to 27,500 people are estimated to be on death row across the world.

The figures also show an increase in executions in a number of countries. Iran executed at 
least 317 people, Saudi Arabia 143 and Pakistan 135 – in comparison to 177, 39 and 82 
executions respectively in 2006.

Eighty-eight per cent of all known executions took place in five countries: China, Iran, Saudi 
Arabia, Pakistan and the USA. Saudi Arabia had the highest number of executions per capita, 
followed by Iran and Libya. Amnesty can confirm at least 470 executions by China - the 
highest overall figure. The true figure for China is undoubtedly much higher.

China -- the world’s top executioner -- classifies the death penalty as a state secret. As the 
world and Olympic guests are left guessing, only the Chinese authorities know exactly how 
many people have been killed with state authorization.

"The secretive use of the death penalty must stop: the veil of secrecy surrounding the death 
penalty must be lifted. Many governments claim that executions take place with public 
support. People therefore have a right to know what is being done in their name," Amnesty 
International said.

During 2007, many countries continued to execute for crimes not commonly considered 
criminal, or after unfair procedures. Among them:

In July, father of two Ja’Far Kiani was stoned to death for adultery in Iran.

In October, a 75 year-old North Korean factory manager was shot by firing squad for failing 
to declare his family background, investing his own money in the factory, appointing his 
children as its managers and making international phone calls.

In November, Mustafa Ibrahim, an Egyptian national, was beheaded in Saudi Arabia for the 
practice of sorcery.

In Texas, USA, Michael Richard was executed on 25 September after a state courthouse 
refused to stay open an extra 15 minutes to allow the filing of an appeal based on the
constitutionality of lethal injections. Richard’s attorneys had been unable to file the appeal on time because of computer problems - which they had already brought to the court’s attention. The US Supreme Court then refused to stop the execution. Earlier in the day, however, it had agreed in a Kentucky case to review the lethal injection issue, a decision that led to a de facto moratorium on all other lethal injection executions around the country. The Supreme Court’s ruling is expected later this year.

Three countries -- Iran, Saudia Arabia and Yemen -- carried out executions for crimes committed by people below 18 years of age, against international law.

But 2007 was also the year in which the United Nations General Assembly voted – by 104 to 54, with 29 abstentions – to end the use of the death penalty.

"The UN General Assembly took the historic decision to call on all countries around the world to stop executing people. That the resolution was adopted in December with such a clear majority shows the global abolition of the death penalty is possible," said Amnesty International.

"The taking of life by the state is one of the most drastic acts a government can undertake. We are urging all governments to follow the commitments made at the UN and abolish the death penalty once and for all."

Figures from a new report, released by Amnesty International, show that more than two thirds of the countries in the world have now abolished the death penalty in law or practice.

As in previous years, the vast majority of executions worldwide were carried out in a small handful of countries. In 2007, 88 per cent of all known executions took place in five countries: China, Iran, Saudi Arabia, Pakistan and the USA.

The report expresses deep concern that many more were killed by the state, in secret. China – the world's top executioner – classifies the death penalty as a state secret. As the world and Olympic guests are left guessing, only the Chinese authorities know exactly how many people have been killed with state authorization. One estimate by the US-based organization Dui Hua Foundation has last year's number at 6,000 based on figures obtained from local officials.

ANTI DEATH PENALTY MOVEMENT

Although the death penalty was briefly banned in China between 747 and 759, modern opposition to the death penalty stems from the book of the Italian Cesare Beccaria Dei Delitti Delle Pene (On crimes and Punishment), published in 1764. In this book Beccaria aimed to demonstrate not only the injustice, but even the futility from the view point of social welfare, of the death penalty. Influenced by the book, Grand Duke Leopold II of Habsburg, famous enlightened monarch and future emperor of Africa, abolished death penalty in the then independent Granducato di boscano (Tuscany), the first permanent abolition in modern times. On November30, 1786 Leopold promulgated the reform of the penal code that abolished the death penalty and ordered the destruction of all instruments for capital execution in his lasnd.15
In 1849, the Roman Republic became the first country to ban the capital punishment in its Constitutions.

Portugal abolished death penalty in 1867.

In the United States, the State of Michigan was the first state to ban the death penalty, on March 1, 1847. Currently, 12 states of the United States and the District of Columbia ban capital punishment.

A number of regional conventions prohibit the death penalty, most notably, the “Sixth Protocol to the European Convention on Human Rights”. However, most existing international treaty categorically exempt death penalty from prohibition in case of serious crime, most notably, “International Covenant on Civil and Political Rights”, while some provide optional protocol to abolish it.

Several International Organizations have made the abolition of the death penalty as a requirement of membership, most notably the European Union and the Council of Europe. The European Union and the Council of Europe are willing to accept a moratorium as an interim measure. Turkey has recently, as a move towards European Union membership, undergone a reform of its legal system. As a result, Europe is a continent free of the death penalty in practice with the sole exception of Belarus, which is not a member of the Council of Europe.

Amnesty International is a well known International human rights organization based in London and issues annual reports on human rights issues throughout the world. It advocates for the abolition of the death penalty, and has an ongoing anti-death penalty campaign.

Death Penalty Information Center (DPIC) is a non-profit organization providing analysis and information on issues concerning capital punishment. It advocates for abolition of death penalty.

The present trend in most of the countries has long been to move to less painful, or more “humane”, executions. France developed the guillotine for this reason in the final years of 18th Century while Britain banned drowning and quartering in the early 19th Century. In the United States electrocution and the gas chamber have been almost entirely superseded by lethal injection.

Many artists & writers in modern period advocated abolition of death penalty. Victor Hugo’s The Last Day of a Condemned Man (le dernier jour d’un condamné) describes the thoughts of a condemned man just before his execution; also notable is its preface in which Hugo argues at length against capital punishment.

In “The Chamber” by John Grisham, a young lawyer tries to save his klansman grandfather who committed murders. This novel is noted for presentation of anti-death penalty materials. Capital punishment has been the basis of many motion

5.7. Conclusion

International bodies have increasingly made statements and adopted policies favouring abolition on human rights grounds. These statements and policies are beginning to be backed up by national courts decisions ruling out death penalty as a violation of human rights. From the above discussion we can safely assume that while at one point of history no one questioned the validity of using death penalty, now a days it is questioned at every occasion. Abolitionists are gradually gaining grounds and retentionists are on the back foot.
CHAPTER SIX

Law Relating to Capital punishment in Bangladesh

6.1 Introduction

Constitution of Bangladesh mentions that no person shall be deprived of life or personal liberties save in accordance with law. No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. Prisoners sentenced to death in Bangladesh have an automatic appeal hearing before the High Court. If this fails they can also lodge additional appeals with the High Court. They can then appeal to the Supreme Court, and after that they have the right to appeal to the President for clemency. Executions are carried out after all these appeals have been exhausted. The true intention of the constitution of Bangladesh not favors capital punishment rather it supports reformation of an offender through probation and finally the president can pardon through his right to prerogative of mercy. In 2015 the AD of the SC of Bangladesh scraped death penalty of Shukkur Ali to imprisonment for life in a review petition.

6.2 Types of penalty prescribed under the Penal Code of 1860

The punishments to which offenders are liable under the provisions of this Code are:

First, Death; The word “death” denotes the death of human being, unless the contrary appears from the context.

Secondly. –Imprisonment for life;

Fourthly. – Imprisonment, which is of two descriptions, namely:

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly. – Forfeiture of property;

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18 Article-33, ibid.
19 Article-35 (5), ibid.
20 Section-53, ibid.
Sixthly. – Fine.

6.3. Offences punishable with death sentence under the Penal code


It would be pertinent to refer to the relevant provisions of the Penal Code, which provide for death penalty for certain specified offences. These offences are:

1. Waging war against the Government. (sec. 121)
2. Abetment of Mutiny (sec.132)
3. Giving or fabricating false evidence leading to procure one’s conviction for capital offence. (194)
4. Murder. (sec. 302)
5. Abetment of suicide by child or insane person. (sec. 305)
6. Attempt to murder by a life convict, if hurt is caused. (sec307)
7. Dacoity with murder. (sec. 396)
8. Kidnapping for ransom etc. (sec 364-A)

An analysis of the aforementioned provisions of the Penal Code reveals that there are valid reasons for allowing wider judicial discretion in case of sentencing. To elaborate this point further it would be convenient to classify the aforesaid eight offences into three broad categories, namely:

a) Offences against Government (sec.121 and 132)
b) Offences against lawful justice (Sec. 194)
c) Offences against persons (sec 302, 303, 305, 307, and 396)

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6.3.1 Offences Against Government

Section 121. says whoever, wages war against Bangladesh, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine. For example:- A joins an insurrection against the Government of India. A has committed the offence defined in this section. Section 132 provides that Whoever abets the committing of mutiny by an officer, soldier, sailor or airman in the Army, Navy or Air Force of Bangladesh, shall, if mutiny be committed in consequence of that abetment, be punished with death or with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

As regards offences against the Government, it is suggested that death penalty would hardly serve any purpose. Thus for example, if a person believes that there is no way out to prevent exploitation of the poor at the hands of the capitalists Government unless Government itself is thrown out of power and commits offence under section 121 and 132 of the Penal Code, he does not really want to kill persons. There is no criminal intent present in the phenomenon. He wants to liberate oppressed people from the hands of the oppressors. His act is directed towards a noble cause, and death penalty in this case only will result in silencing the voice of a critic of the Government. But in Bangladesh there had been cases where political opponents were hanged to silence there voices.

6.3.2. Offences against lawful justice

Section 194 provides that giving or fabricating false evidence with intent to procure conviction of capital offence shall be punished. The Code warns that whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by the law for the time being in force, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. It further says that and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment herein before described.

Where an individual fabricates evidence against a person who is charged with murder the Code prescribes death penalty. In this case also, death penalty do not really helps to deter such practices. Those who indulges in such practices are often victims of sick psychology, and death penalty is not a fitting punishment in such matters.

6.3.3. Offences against persons

Penal code prescribes death penalty for a series of offences committed against the person of an individual. We shall discuss them in the following:-
6.3.3.1 Punishment for murder

According to sec 302. of the Penal Code “Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Section 300 then details what shall be considered as murder.

“300. Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly. If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

The term murder has to be restrictively interpreted and therefore the Code gives some examples. They are following:-

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z’s death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

However the Code also delineates some exceptions. For example Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.
The above exception is subject to the following provisos:-

First- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing, or doing harm to any person.

Secondly- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly- That the provocation is not given by anything done in the lawful exercise of the right of private defence.

The Code says that whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. It also gives some examples:

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

The Code also mentions that culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence. For examples Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.
There are certain other exceptions according to the Code when culpable homicide is not murder if the offender, being a public servant or aiding, a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused. Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. It is immaterial in such cases which party offers the provocation or commits the first assault. Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent. To give an example A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

6.3.3.2 Punishment for murder by life-convict.

In section 303 the Code says that “Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death”. Attempts by life convicts on another person and the person concerned is hurt shall also be punished with death. The Code gave the following examples:-

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensure.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing, he wounds Z, he is liable to the punishment provided by the latter part of [the first paragraph of] this section.

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servant to place it on Z's table. A has committed the offence defined in this section.

6.3.3.3. Punishment For Abetment

Section 305 provides that if any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.
Exceptions where commitment of offences otherwise punishable by death

i) Things done under threat

According to section 94 Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation .1- A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.- A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

ii) Things done in private defence

According section 96 Nothing is an offence which is done in the exercise of the right of private defence. Every person has a right, subject to the restrictions contained in section 99, to defend-

First- His own body, and the body of any other person, against any offence affecting the human body;

Secondly- The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

The Code also says that an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence. For example,

(a) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.
However there is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law. There is no right of private defence against an act which does not, reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law. There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised-

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant. A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded. Section 100 says that ‘The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:-

Firstly- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly- An assault with the intention of committing rape;

Fourthly- An assault with the intention of gratifying unnatural lust;

Fifthly- An assault with the intention of kidnapping or abducting;

Sixthly- An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.’ According to the Code a person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:- Firstly- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault; Secondly- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault; Thirdly- An assault with the intention of committing rape; Fourthly- An
assault with the intention of gratifying unnatural lust;  Fifthly- An assault with the intention of kidnapping or abducting;  Sixthly- An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release. The right of private defence of property extends, under the restrictions mentioned in the Code, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:-  First- Robbery;  Secondly- House-breaking by night;  Thirdly- Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;  Fourthly- Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised. If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk. For example,

A. is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

Section 396 provides that If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or 2[imprisonment] for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Attempt to murder under section-307 of the PC by life-convict.

Waging of war against Bangladesh 121-124 sections of the PC.

Abetment to mutiny- section-131 of the PC.

Giving Falsification of evidences under section-194-195 of the PC.

6.4 Death Penalty Under The Arms Act, 187823- 

Section-19A, 20A of the Arms Act, 1878 states that “Notwithstanding anything contained in this Act, whoever goes armed with a pistol, revolver, rifle (shotgun or other fire-arm) in contravention of the provisions of section 13, or has any such fire-arm in his possession or under his control in contravention of the provisions of section-14 or section 15, under circumstances indicating that he intended that such fire-arm should be used for the commission of any offence of murder shall be punished with death, or with transportation for

life or any shorter term or with imprisonment for a term which may extend to fourteen years, to which fine may be added.

6.5 Death Penalty Under Nari-O-Shishu Nirjaton Damon Ain, 2000

This law is mainly enacted for the protection of women and child and the following provisions of the law provide death penalty for committing offence as mentioned in those laws:

Section-4: Offence committed by Corrosive substance or other substances causes death of a child or women or attempts to cause the death of a child or women for which punishment is death penalty or imprisonment for life and also fine not exceeding one lac taka.
It is also mentioned that if any child or women is injured by any corrosive substance for which she lose her eyesight, hearing power or face or breasts or sexual organ is disfigured shall be punished for death or imprisonment for life and also fine not exceeding one lac taka.

Section-5; Whoever kidnaps or abducts any women with the intent that such women shall be employed for prostitute or immoral or unlawful acts or takes her into custody and imports her from abroad or sends or traffics or sell or purchase her or transfers of hire or torture for which punishment is death penalty or imprisonment for life or not more than twenty years and not less than ten years and also fine in addition thereof.

Section-6: Whoever kidnaps or abducts any child from abroad or sends to abroad with the intent of immoral or unlawful act, trafficking, sell or purchase or takes her into custody or steal a child from hospital, clinic, nursing home etc for which punishment is death penalty or rigorous imprisonment for life and also fine in addition thereof.

Section-8: Punishment for ransom: If any person confines any women or child for ransom, he shall be punished for death penalty, or imprisonment for life and fine in addition thereof.

Section-9: Punishment for rape or death caused by rape is death penalty or imprisonment for life and fine not exceeding one lac taka.

Section-11: Death caused or attempt to cause death for demanding dowry for which the punishment is sentenced to death or imprisonment for life and fine in access thereof. The punishment may be imposed against the husband or his relatives or family members those who are involved in committing this offence.

Section-12: Amputation/ Mutilation with the intent of begging for which punishment is death penalty or rigorous imprisonment for life and fine in addition thereof.

6.6. Death Penalty Under Acid violation prevention Act 2002

Act No. II of 2002
http://bdlaws.minlaw.gov.bd/bangla_pdf_part.php?act_name=&vol=%E0%A7%A9%E0%A7%AB&id=883

The following sections of the above Act states the provisions that allow death penalty for committing an offence as mentioned thereof:

Section-4. Punishment of murder by Acid-
If any person causes death to another by acid then such person shall be liable to be punished of death penalty or of rigorous life imprisonment and also one lac taka fine in addition thereof.

Section-5. Punishment of causing injury by acid-
If any person causes injury in such a way to another person by any types of acid in consequence of which-

(a) eyesight or hear power fully or partly destroyed or face, breast or sex organ is disfigured or damaged then such person shall be liable to be punished of sentenced to death or rigorous life imprisonment and also fine not more than one lac taka in addition thereof.

Section-23. Acid Oporadh damon Tribunal (Acid violation Prevention Tribunal)

(1) The Government shall, to try an offence under this Act, establish/ constitute one or more tribunal through gazette notification and every such tribunal shall be known as Acid Violation prevention tribunal.
(2) Where more than one tribunal is established, the jurisdiction of every such tribunal shall be fixed by gazette notification as mentioned in sub-section(1).
(3) Every tribunal shall be constituted by a single judge and the Government shall appoint them out of the District and sessions Judge.
(4) The Government, if necessary, may appoint any District and sessions Judge as Judge of the tribunal in addition to his duty.
(5) To fulfill the purpose of this section the District and sessions Judge shall also include Additional district and sessions Judge.


The narcotics Control Act also provides death penalty for many offences as mentioned in section-19.

Section-19: A person under this section may be liable to be punished with death penalty for cultivation, production and refinement of some narcotics like heroine, cocaine, path Odin, morphine, opium etc. The punishment shall depend upon the quantity of the narcotics.

6.8. The Special Powers Act, 1974 (Act No. XIV of 1974)\textsuperscript{27}

\url{http://bdlaws.minlaw.gov.bd/pdf_part.php?act_name=&vol=XVIII&id=462}

The following provisions of the Special Powers Act deals with capital punishment.

Section-25: Penalty for hoarding or dealing in black-market-
(1) Whoever is found guilty of the offence of hoarding or dealing in the black the organized, black-market shall be punishable with death, or with imprisonment for life, or with rigorous imprisonment for a term which may extend to fourteen years, and shall also liable to fine.

Section-25A: Penalty for counterfeiting currency notes, Government stamps-
Whoever-
(a) Counterfeits, or knowingly performs any part of the process of counterfeiting any currency note or Government stamp; or
(b) Sells to, or buys or receives from any person, or otherwise traffics in or uses as genuine, any counterfeit currency note or Government stamp, knowing or having reason to believe the same to be counterfeit; or
(c) Makes, and performs any part of the process of making, or buy or sells or disposes of, or has in his possession, any machinery, instrument or material for the purposes of being used, or knowing or having reason to believe that it is intended to be used for counterfeiting any currency note or Government stamp, shall be punishable with death, or with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.

Section 25B- Penalty for smuggling-
1) Whoever, in breach of any prohibition or restriction imposed by or under any law for the time being in force, or evading payment of customs duties or taxes leviable thereon under any law for the time being in force,
(a) takes out of Bangladesh Jute, gold or silver bullion, manufacturers or gold or silver, currency articles of food, drugs, imported goods or any other goods; or
(b) brings into Bangladesh any goods, shall be punishable with death, or with imprisonment for life, or with rigorous imprisonment for a term which may extend to fourteen years and shall not be less than two years, and shall also be liable to fine.

Section-25C. Penalty for adulteration of, or sale of adulterated food, drink, drugs or cosmetics-
(1) Whoever-
(a) Adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink; or
(b) Sells or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same in noxious as food or drink; or
(c) Adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medical purpose as if it had not undergone such adulteration; or

\textsuperscript{27} Bangladesh Code, Vol.XVIII, pp-410-433
(d) Knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy to change its operation, or to render it noxious, sell the same, or offers or exposes it for sale or issues it from any dispensary for medical purposes as unadulterated, or causes it to be used for medical purposes by any person not knowing of the adulteration; or
(e) Knowingly sells, or offers or exposes for sale, or issues from a dispensary for medical purposes, any drug or medical preparation as different drug on medical preparation, Shall be punishable with death, or with rigorous imprisonment for a term which may extend to fourteen years, and shall also liable to fine.

The other laws providing for the punishments of death penalty in Bangladesh are:

1. Human Trafficking Prevention and Deterrent Act, 2012 (sec-7...);
   http://bdlaws.minlaw.gov.bd/bangla_pdf_part.php?act_name=&vol=%E0%A7%AA%E0%A7%A8&id=1086


3. Border Guard Bangladesh Act, 2010 (sec-28...)
   http://bdlaws.minlaw.gov.bd/bangla_pdf_part.php?act_name=&vol=%E0%A7%AA%E0%A7%A7&id=1067

4. Anti-Terror Act, 2009 (sec-6...);
   http://bdlaws.minlaw.gov.bd/bangla_pdf_part.php?act_name=&vol=%E0%A7%AA%E0%A7%A7&id=1067
   http://bdlaws.minlaw.gov.bd/bangla_pdf_part.php?act_name=&vol=%E0%A7%A9%E0%A7%AF&id=1009

5. The Army Act, 1952 (Act No. XXXIX of 1952) (sec-31...);


8. The Punishment of death penalty for mutiny is also applicable for other defence forces. (Coast Guard Act, 1994; RAB, Police, Ansar, Armed Police etc.,)
However, if they are not designated as defence forces, their trial shall be held in ordinary Court for offences relating to mutiny, insubordination, desertion etc, (9).

(9) Narocites Control Act, 1990 (Act No. 20 of 1990) (sec-19-21...);
http://bdlaws.minlaw.gov.bd/bangla_pdf_part.php?act_name=&vol=%E0%A7%A8%E0%A7%AE&id=736

(10) The Explosive Substances Act, 1908 (sec-3);

6.9. The Procedure For Execution of the Death Sentence

Section-34A says that when a person is sentenced to death under this Act, the sentence may be executed by hanging him by the neck till he is dead or by shooting him in the prescribed manner till he is dead or by shooting him in the prescribed manner till he is dead as the Special Tribunal may direct.

According to the Code of Criminal Procedure, 1898, If the accused is convicted of an offence punishable with death or , in the alternative with imprisonment for life or imprisonment for a term of years, the Court shall in its judgment state the reasons for the sentence awarded. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal, should be preferred. In this case the provisions of the Limitation Act are also important.

The time limitation for disposal of a second appeal is 60-days whereas the time limitation for disposal of a first appeal is of 90 days. In the case of death penalty an appeal should be filed to the Appellate Court within seven (7) days from the date of passing the judgment. If no appeal is filed by the convicted in a case where sentenced to life is given, it shall automatically goes to the High Court Division and registered as Death Reference Case.

From the above discussion it can be said that every judgment shall be written in the language of the Court or in English or it may be translated into the language of the accused or witnesses. A judge shall write down the judgment in his own mother-tongue. The procedure of taking evidence in respect of a witness and in respect of an accused is not same. All and every evidence shall be taken in front of the accused or his advocate and every judgment shall be passed in the open court in front of the accused or his advocate. No one may be punished twice for the same offence. The liabilities of the execution of judgment are on the Magistrates. An accused is not a witness. An expert may be considered as a witness. Every person is entitled to get certified copy’s of the judgment without paying cost except in the cases where judgement is passed by the Magistrates. No judgment can be altered unless there is a clerical error. A court may order for dispensed with the personal attendance of the accused at any stage of inquiry or trial if such accused is represented by an advocate (section-540A).
When any case is filed before any court either in its original jurisdiction or in appeal, review, revision, reference, miscellaneous, writ, leave to appeal etc a case number is endorsed on the petition. **Death reference case**\(^{28}\) is such kind of case which is automatically registered to the High Court Division when no appeal or revision is filed by the convict accused who is sentenced to death by the Court of Session. It is important to note that no person will be hanged till death for committing any offence by the judgment passed by a Court of Session unless it is confirmed by the High Court Division. So, when any judgment relating to death penalty is passed by any Criminal Court and if the convicted accused not takes any initiative against the judgment, it shall automatically be registered as death reference case to confirm the judgment. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court Division and the sentence shall not be executed unless it is confirmed by the High Court Division.

The High Court Division in dealing with appeals of reference proceedings where the question of confirming death sentence is involved, shall deal with the matter carefully and to examine all relevant and material circumstances before upholding the conviction and confirming the sentence of death. A death reference made by the Court of Session may be disposed of even if the condemned accused is absconding. Although in the Code, there are provisions of passing death penalty by the CMM or DM or ACMM or ADM if they are specially empowered by the Government for this purpose under section 29C, there is no specific provisions of confirming the sentence before execution as the provisions of section 374 clearly mentioned to the sentenced to death passed by the Court of Sessions. When any appeal is filed against the death sentence no death reference case will be registered. The High Court Division shall not confirm the sentence until the period allowed for preferring an appeal has expired. The High Court Division may make further inquiry and confirm or annul the conviction or even pass any other sentence warranted by law. Provided that no order of confirmation shall be made under this section until the period allowed or preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

**Confirmation of new sentence to be signed by two Judges**\(^{29}\)

In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court Division, shall when such Court consists of two or more judges, be made, passed and signed by at least two of them.

When any such case is heard before a bench of judges and such Judges are equally divided in opinion, the case with their opinions thereon, shall be laid before another Judge, and such Judge, after such hearing as he thinks fit shall deliver his opinion, and the judgment or order shall follow such opinion.

When a sentence of death passed by a Court of Session is submitted to the High Court Division for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court Division thereon cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

**Discussion**

Only the Sessions Judge which passed the death sentence can issue warrant for execution of sentence. Every warrant for the execution of imprisonment of life or other forms of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

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\(^{28}\) Section-374 of the Code of Criminal procedure, 1898.

\(^{29}\) See-section-377 of the Code of Criminal Procedure, 1898.
If a woman sentenced to death is found to be pregnant, the High Court Division shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute the sentence to imprisonment for life.

Return of warrant on execution of sentence

When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

The President as well as the Government retains the power to commute the sentence under sections 401, 402, 402A of Cr P C and also under sections 54, 55 and 55A of the Penal Code as well as Article-49 of the Constitution.

Special and ordinary criminal courts of Bangladesh empowered to give capital punishment as ordinary original jurisdiction

District level: (In general hierarchy)
i) Sessions Court can be divided into 3 categories i.e.
   a) District sessions Judges Court (original, appellate, revisional, reference and transfer jurisdiction; He can pass any judgment and try any case but if passes a sentence to death, the same can not be executed unless confirmed by the High Court Division)
   b) Additional District Sessions Judges Court (Can try cases referred by the District sessions judges court)

Metropolitan level

a) Metropolitan Sessions Judges Court (Same as to District Sessions Judges court but the jurisdiction confined within the metropolitan area i.e. original, appellate, revisional, reference and transfer jurisdiction; He can pass any judgment and try any suit but if passes a sentence to death, the same can not be executed unless confirmed by the High Court Division)

b) Additional Metropolitan Sessions judges court (Only exercise his jurisdiction to a case as referred to him by the Metropolitan Sessions judge’s court)

There are posts of Divisional sessions Judges and Joint metropolitan Sessions judges but their powers, functions and jurisdictions are not mentioned clearly anywhere. As much as I know the posts are vacant at present. In Dhaka Court, there is a Court known as Divisional Special Judge and Drug Court presided over by a Divisional Special Judge who is superior to the District and Sessions Judge.

♦ The Women and Child Repression Prevention Tribunal (Nari-o-shishu-nirjatan-damond-tribunal)

30 See-section-400 of the Code of Criminal Procedure, 1898.
31 There are 64 Districts in Bangladesh; Definition of ‘local government’ is mentioned in section-03 of the General Clauses act,1897; Local govt. of Bangladesh includes (i) village, (ii) Union Parishad, (iii) Upazilla/ Thana, (iv) District, (v) Municipality Corporations and (vi) City Corporations;
32 Bangladesh is divided into 6 administrative divisions i.e. (i) Dhaka, (ii) Chittagong, (iii) Sylhet, (iv) Rajshahi, (v) Khulna, and (vi) Barisal; In every Divisions there are metropolitan Sessions and metropolitan Magistrates Courts to try criminal cases;
In every district there must be a Tribunal known as Nari-o-shishu-nirjatan-damon-tribunal (Women and child repression prevention tribunal) as mentioned in section-26 of the Act, 2000.

A District and Sessions Judge or an Additional District and Sessions judge will preside over the court either permanently or in excess of his duty as the government decides. This Court mainly takes into cognizance of offences relating to Ransom, kidnapping, trafficking, abduction, corrosive substances, dowry etc. when the Tribunal will follow the provisions of CrPC and the highest punishment for offences is death penalty with fine. An appeal will lie to the HCD with in sixty days from the decision of the Tribunal. There are 34-sections in the law. The offences under this Act are cognizable and the trial will be in camera (i.e. confidential) and it will be concluded within 180 days.

♦ The Acid violation prevention Tribunal (Acid Aporadh Damon Tribunal)

There are two special Laws on Acid in Bangladesh one is The Acid Control Act, 2002 and another is The Acid Violation Prevention Act, 2002. In section-23 of the later laws it was/is inserted provisions for the establishment of an Acid violence prevention Tribunal. The government will appoint judges to the Acid Tribunal among the Judges of the Dist. and Sessions Judges including Additional Dist. and Sessions Judges and one or more Tribunal may be established. Except in the case when a person (complainant) will fail to take sanction from the SI and if he can satisfy the court than he can directly file a case to the Acid tribunal. If an offence is connected with another offence than the Tribunal can try both the offences although the later may be triable by an ordinary court. Under section-26 of the Act an appeal will lie to the HCD within sixty days from the date of judgement by the Tribunal. The Tribunal will follow the proceedings of CrPC and can impose sentenced to death with fine. The court must conclude the proceedings with in ninety days. There are thirty sections in the law.

♦ The Speedy Trial Tribunal (Druto-Bichar-Tribunal)

Under section- 04 of the Speedy Trial Tribunal Ordinance, 2002 the President may appoint any Sessions Judge or retired Sessions Judge to be the judge of the Speedy Trial Tribunal. The Speedy Trial Tribunal will deal only such cases as may be referred to it by the Government. The Tribunal will follow the proceedings of CrPC and the Tribunal will start the proceedings from the stage where it was pending or stayed. The Tribunal will conclude its proceedings within 90-days as mentioned in section-10 and an appeal against the final judgement will lie to the HCD within 30-days as stated in section-14 of the Act. IN the emergency period an offence under this law will be tried by the Speedy trial Tribunal judge with in 45 days and that period may be extended for a period of 15 days more.

33. See- DLR,2000 Vol.LII (52) ,Bangladesh Statutes, pp.30-39;
34. At present under the Penal Code,1860(section-53 and 73) and CrPc,1898 (section-390-395) punishments are, (i) Sentenced to death, (ii) imprisonment for life, (iii) imprisonment either simple or rigorous, (iv) forfeiture of property, (v) fine, (vi) solitary confinement, (vii) whipping;
35. In Bangladesh death penalty can be executed either by hanging in neck till death or taking to a firing squad under the special powers Act. Except those various countries are now practicing like electrocution, beheaded, lethal injection etc.
36. Fine may be fixed or advalorem (discretionary or based on the value of the case or suit);impose, recovery and utilization of fine amount are mentioned in section-63 to 70, Penal code, section-386-389 of Cr PC, and also in section-25 of General Clauses Act,1897;
37. Cognizable means an offence for which police may arrest without warrant as listed in schedule-II of the CrPC, 1898;
38. Trial starts with the framing of charge and concludes by giving judgement;
40. See- DLR,2003 Vol. LV (55),Bangladesh Statutes, pp 16-19;
Special Tribunal


An appeal against the order, judgement, decision or sentence of the Special Tribunal will lie to the HCD (Section-30).

6.10. Conclusion

Bangladesh is a conflict ridden country. Crime rate is also very high. Consequently the Legislatures taking the existing reality in consideration have promulgated laws to tackle the situation. Specially crimes against woman is a big concern for the Government. There was a time when acid throwing at girls and women were a regular incident. Romeos being refused by the concerned lady would threaten to throw acid at her. Thousands of young girls suffered as a result. The Legislatures, in face of public demand were bound to introduce death penalty for acid throwing. There are number of offences for which death penalty is prescribed. But the question is whether or not existence of the death penalty has resulted in the lessening of the targeted crimes.

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41. See- DLR, 194 Vol. XXVI (26) ,Bangladesh Statutes, pp. 173-180B
Chapter Seven
Sentencing practices in Bangladesh

7.1. Introduction

The criminal justice system of Bangladesh postulates that determination of the sentence, after conviction, is not a separate process. Both the conviction and the sentence imposed are pronounced together in delivering judgment. Further, in Bangladesh, the penal law gives a wide discretion to the sentencing judges for determination of the sentence that follows the conviction of a defendant. However, the exercise of such sentencing discretion by the sentencing judges is one area that remained largely ignored by Bangladesh criminal justice system. The penal policy of Bangladesh lacks sufficient alternative measures to punishment. Although there are elaborate provisions for compounding of offences (under section 345 of the Code of Criminal Procedure 1898) and probation (under the Probation of Offenders Ordinance 1960), yet these are hardly ever raised or adequately utilized.

7.2. Sentencing practice

Sentencing is becoming a more complex task day by day. Internationally, over the last fifty years there have been increasing attempts to try to reform sentencing practices in various jurisdictions. However, in reality the successful implementation of reform has been notoriously difficult to achieve. The act of sentencing is fundamentally a comparative process. It is, of course, an axiom of judicial rhetoric on sentencing that every case is unique and as such each case must be judged in its own facts. Therefore, many argue that since each case is unique it is therefore not possible to compare one case with another.

Two diverse principles help us to analyze the complex process of sentencing: on one side, it is the principle of ‘equality of treatment’, on the other, the principle of ‘individualization of justice’. The principle of ‘equality of treatment’ would mean that two convicts guilty of similar offences under similar circumstances should get approximately the same treatment. However, this principle is in direct conflict with the notion of ‘individualization of justice’,
which may justify letting one off with probation while confining the other for life depending the characteristics and needs of each offender.

Criminal courts, thus, are often posed with a valid question: should the sentence, to be pronounced, fit the offence or the offender? Both academic writing and sentencing reforms have tended to assume that sentencing either begins, or, should begin, with consideration of the offence, then orientate a sentence which is then adjusted in the light of the nature of the offender. But to ensure that punishments not only fit the crime, but also the particular criminal, the sentencing judge must labor to fulfil the dual and sometimes conflicting roles of judge and clinician. Entrusted with enormous discretion, he is expected to ‘individualize’ the sentence he imposes to suit the character, social history, and potential for recidivism of the offender before him.

It is not clear in the Jail Code, 1864 to execute death sentences which are commonly held after expiration of 21 days and not exceeding 28 days from the date of rejection of appeal/review or presidential prerogative of mercy. A presidential prerogative of mercy petition shall be submitted within seven days from the date of rejection of review petition which is also not strictly guided by law. However in case of death penalty given by the International crime Tribunal under the Act 1973, no specific period of time is mentioned for execution of death sentences which depends on the will of the government.

7.3. Purposes of sentencing

Whether a sentencing system can be said to work well depends much on its purposes, what it is supposed to do, and how well it does that. The old idea that the sentence was right if it was proportionate to the offender’s culpability is no longer a sole objective of sentencing practice. Modern ideas on the purposes of sentencing frequently required a difficult choice between a sentence reflecting the gravity of the offender’s crime (retributive theory), and one, which would serve some other purpose(s), such as, to deter potential offenders from offending again (specific deterrence theory), to prevent the particular offender from injuring society again by increasing him for a long period (preventive theory) and/or to enable the offender to take his place as a responsible and law abiding member of society (rehabilitative/reformative theory).

For long it was believed that the dominant aim in sentencing is retribution, rather than other aims such as deterrence, reformation, incapacitation, reparation, or denunciation. Bentham claims that in the empirical development of criminal law, the principle of retribution was joined and partly overcome by that of general deterrence (and also, prevention). The idea was
to deter offenders by increasing the anticipated cost of crime, that is, the risk of detection and punishment, beyond expected benefits. Sevelsberg argues that the purpose of sentencing should no longer be simply to do justice, but to reduce crime and to diminish its costs to society (deterrence and preventive theory). The next shift in the in the substantive rationalization of criminal law began when rehabilitation rather than punishment (due to retribution, deterrence or prevention) became the primary purpose of criminal justice.

Tudor believes that the problem of justifying imposing punishment can be looked at from two diverse perspectives – first, from the perspective of the ‘agent’ or the ‘punisher’; and second, from the perspective of the ‘patient’ or the ‘punishee’. According to Tudor, the problem of ‘agent justification of punishment’ centers around the agent i.e. the punisher. It refers mainly to the agent’s or the punisher’s perspective as to how he/she would justify the given punishment in a specific situation. Such focus on the agents is most common and most of the above-mentioned theories of punishment (retributive theory, general deterrence theory, specific deterrence theory and preventive theory) are based on such approach.

On the contrary, the problem of ‘patient justification of punishment’ basically focuses on the patient i.e. the punishee. Tudor explains the patient justification of punishment in the following words:

‘Let us assume that some punishment has been justly imposed on a criminal offender. How might this person accept or reconcile herself to that punishment, such that she, rightly or properly, feels no resentment at her suffering and, moreover, regards it as right and just to undergo? Indeed, might she even come positively to seek or will it as something that is desirable or that is in her interests to suffer? These questions pose what I shall call the problem of the ‘patient justification of punishment’.

It is argued that Tudor’s concept of ‘patient justification of punishment’ is not an entirely new idea. It has its support in earlier writings of many criminal law scholars. For example, as early as in 1920s, Ferri identifies five classes of offender type: the born and instinctive criminal, the insane criminal, the passional criminal, the occasional criminal, and the habitual criminal. Ferri claims that the primary focus in sentencing should be on the personal and social background of the offender, rather than on the nature of the crime committed.

Like Ferri, Glueck in late 1920s, also feels that the emphasis in sentencing should be on the offender, rather than on the crime. He calls for treatment of the offender’s shortcomings rather than punishment based solely upon the offence committed. Glueck recommends the establishment of a ‘Socio-Penal Commission’ (or ‘treatment board’), made up of social scientists, that would determine the type of treatment and duration best suited to each
individual offender (rehabilitative/reformative theory). Such a board, in Glueck’s view, would provide a more truly indeterminate sentence in which the correctional process would be expressly aimed at the offender rather than the act.

It is equally important that a defendant must accept his punishment as a meaningful suffering for the offence committed. If he does not do so, no rehabilitative or reformatory punishment would work for him. Silving thus rightly finds that a defendant may be more receptive to rehabilitation if he feels that he has received fair treatment. A convict who believes that he is the victim of a judge’s prejudices is often a hostile inmate, resistant to correctional treatment as well as to discipline.

Therefore, it is argued that in determining the purpose of sentencing, it is essential to make a balance between the justification of both the agent (punisher) and the patient (punishee). In other words, a successful sentencing system must utilize an appropriate combination of all theories of punishment, starting from retributive theory, deterrence theories, preventive theory to rehabilitative/reformative theory.

7.2. Current sentencing practices in Bangladesh

- Constitutional responsibility for sentencing

Most countries have an explicit or implicit commitment to the ‘doctrine of separation of powers’, in the sense that certain functions are allocated constitutionally to separate organs of the state (legislature, judiciary, or executive). The Constitution of Bangladesh explicitly recognizes that the State shall ensure the separation of the judiciary from the executive organs of the State. However, the function of sentencing in Bangladesh is essentially a matter for both the legislature and the judiciary. There is widespread acceptance in Bangladesh of the notion that the legislature has the function of setting the limits of state intervention by sentencing, and the role of the judiciary is to use their discretion to select the appropriate sentence in individual cases.

Qadri argues that when we accept that prescribing sentences for various offences is a legislative function, then of course the courts cannot question the wisdom of legislature even if the sentences appear to them to be ‘unreasonable’ or ‘excessive’. However, there is a Constitutional limit on legislature in Bangladesh in prescribing sentences. According to the Constitution of Bangladesh, no person in Bangladesh shall be subjected ‘to torture or to cruel, inhuman or degrading punishment or treatment’. Therefore, the courts in Bangladesh have an
actual power to strike down a punishment as ‘unconstitutional’ if it is ‘cruel, inhuman or degrading’.

Now, let us turn to the issue of judicial discretion in sentencing matters. As a matter of Constitutional principle in Bangladesh, discretion in sentencing belongs to the judiciary. It is stated that the arguments in favour or maximum judicial discretion in sentencing actually derives from the principle of judicial independence. Independence of judiciary is central to the Constitution of Bangladesh. Therefore, if legislature constrains the discretion of the courts in sentencing matters, they encroach on judicial independence. However, the President of Bangladesh enjoys a prerogative of mercy by which he/she has a power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority. Nevertheless, it is to be remembered that a favourable response by the President is an act of grace and cannot, therefore, be claimed as a matter of right.

Further, according to the Constitution of Bangladesh, no person shall be subjected to ‘a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence’. This Constitutional provision requires that when the legislature provides a penalty for an offence, it cannot make the law retrospective so as to prejudicially affect the persons who have committed such acts prior to the enactment of the law.

- **Sentencing structure**

Ashworth identifies four different categories of sentencing structure:

(a) Mandatory or Mandatory Minimum Sentence: The strongest device by which a legislature can determine sentencing is the mandatory sentence, requiring courts to pass a particular sentence on convicting a person of a certain crime. Mandatory minimum sentences have been roundly rejected in Canada, Victoria (Australia) and the US.

(b) Fixed-point Sentencing: The essence of this system is that the law lays down a standard sentence for each offence, together with an aggravated sentence and a mitigated sentence.

(c) Numerical Guidelines: Under this heading three different approaches are considered-guidelines that establish ranges of sentences, those that indicate a base sentence and enhancements, and those that provide starting points and no formal structure beyond. What they have in common, as the name suggests, is that they attempt to guide sentencing discretion by numbers.

(d) Hierarchy of Principles and Policies: Here, the court’s first task is to assess the ‘penal value’ of the offence, taking account of its harmfulness, the defendant’s culpability, and a
number of other specified factors. The second task is then to determine whether the case requires imprisonment or a fine, based on the scale of seriousness; a list of factors is again supplied. If the case is thought so serious as to require imprisonment, the third state is to consider whether probation or a conditional sentence should be ordered instead of imprisonment; various principles are set out here too. The essence of this approach, then, is that the guidance does not set out sentence ranges or starting points, but furnishes the courts with general instructions on how to develop such ranges and starting points.

It is stated that Bangladesh follows the numerical guidelines sentencing structure. The penal law sets the minimum or maximum sentence for a particular crime, it may set the range, or it may allow different types of sentences (fine, imprisonment, etc.); at the very least, it provides a choice between two alternatives, for instance, a finding of death or life in prison.

- Sentencing Hearing

In many jurisdictions, the sentence is imposed after a separate hearing, held within a few days after judgment has been rendered. At such sentencing hearing, both sides have the opportunity to present evidence and testimony to recommend an appropriate sentence. In addition to the information supplied by parties, the judge is typically supplied with a pre-sentence investigation report. Such reports are now a regular feature of the English and American criminal law system. In intent and methodology, the pre-sentence investigation has been described as an effort to determine ‘the social credit rating of the individual’.

In Bangladeshi criminal proceedings the issue of punishment, as distinct from the issue of guilt, generally presents no question of fact or law. Thus the criminal justice system of Bangladesh postulates that determination of the sentence, after conviction, is not a separate process. Both the conviction and the sentence imposed are pronounced together in delivering judgment.

It is evident that the sentencing authority must have sufficient information regarding the various personal factors of the accused if the sentencing decisions are to proceed on any scientific premises. In the absence of any pre-sentence reports, courts in Bangladesh have to fix the punishments on the basis of whatever inadequate information they receive about the offender in the course of the actual trial. Moreover, when the sentencing bench has too many cases to dispose, it is under a serious pressure to ‘get facts quickly and decide quickly’. Many fears that such a circumstance alone might lead to arbitrary sentencing simply because of the lack of information necessary to make a reasoned decision.
Types of Sentencing

(Bangladesh) Penal Code, 1860 explicitly provides for mainly five categories of criminal sentencing:

(a) Death: Death is the highest form of punishment authorized by Bangladeshi law. When a person is sentenced to death the sentence shall direct that ‘he be hanged by the neck till he is dead’. In Bangladesh, neither the Courts of Magistrates, nor the Courts of Assistant Sessions Judge may pass a sentence of death. It is only the High Court Division, the Courts of the Sessions Judge or the Additional Sessions Judge, which may pass a sentence of death. However, any sentence of death passed by the Courts of the Sessions Judge or the Additional Sessions Judge shall be subject to confirmation by the High Court Division. Further section 374 of the Code of Criminal Procedure, 1898 states that death sentences passed by the Sessions Judge cannot be executed unless the High Court Division confirms the same. If a woman sentenced to death is found to be pregnant, the High Court Division can postpone the execution or may even commute the sentence to imprisonment for life. A death sentence can be suspended, remitted or be commuted for any other sentence by the government as well as the President.

(b) Imprisonment for life: A sentence of imprisonment for life may be treated as imprisonment for the whole of the remaining period of the convicted person’s natural life. However, a convict may earn certain remissions. But, such remissions are subject to appropriate Government orders remitting the entire balance of sentence. It may be mentioned that nowhere in the (Bangladesh) Penal Code, 1860 the definition of ‘imprisonment for life’ be found. Looking at section 57 of the (Bangladesh) Penal Code, 1860, which comes closest to defining life imprisonment, the term would mean 30 years. It states: ‘In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for 30 years’. So, should life imprisonment automatically be treated as one of the definite period of 30 years, excluding remission? It is argued here that the expression ‘imprisonment for life’ must be read in the context of section 45, (Bangladesh) Penal Code, 1860, would ordinarily mean imprisonment for the full or complete span of life. It is further stated that sections 57 (Bangladesh) Penal Code, 1860 has made it abundantly clear that the 30 years’ imprisonment is to adopted only ‘in calculating fractions of terms of punishment’. Where no such computation of fractions is involved, it is found in other jurisdictions, such as a sentence for imprisonment for the whole of the remaining period of the convicted person’s natural life.
(c) Imprisonment: Imprisonment can be of two types – rigorous imprisonment and simple imprisonment. Rigorous imprisonment would mean imprisonment with ‘hard labour’. On the contrary, simple imprisonment would not involve any kind of ‘hard labour’. In the punishment of imprisonment for life, the imprisonment shall always be rigorous. When nature of imprisonment is not disclosed in judgment, imprisonment is generally taken to be simple. Sentence of imprisonment may be wholly or partly rigorous or simple. It may be mentioned that both short-term and long-term imprisonments have their inherent disadvantages. Short-term imprisonments have their inherent disadvantages. Short-term imprisonment is considered useless in the sense that no institutional training or reformatory treatment is possible during such short period. It is also considered dangerous because prison might provide ‘ideal surroundings to novices and the minor offender for further training in a criminal career’. On the other side, long-term imprisonment is criticized on the ground that it might ‘brutalize the convict and blunt his finer sensibilities’.

(d) Forfeiture of property: Forfeiture is an established form of punishment. The word, ‘forfeiture’ means ‘a loss or deprivation of goods in consequence of a crime, offence or breach of engagement or by way of penalty of transgression or punishment for an offence. According to (Bangladesh) Penal Code, 1860, there are mainly three offences in which the offender is liable for forfeiture of specific property. These offences are: offence of committing depredation on territories of power at peace with Bangladesh, offence of receiving property taken by war or depredation, and offence by public servants for unlawfully buying or bidding for property. It may be mentioned the sentence of forfeiture of property is quite different from confiscation of property. Confiscation is not a part of the sentence for an offence, but only one of the modes by which courts can dispose of property, which comes before it in criminal trials.

(e) Fine: Imposition of fine is a financial punishment independent of physical punishment. Economic penalties, like fine, are among the most effective alternatives in keeping many convicts out of prison. Some believe that setting fixed fines for specified offences avoids difficult questions about what the amount of the fine should be in a particular case. In other cases, the requirements of equality demand that an attempt should be made to ensure that the fine is also related to the income of the offender so that the fine should have an equal ‘penal bite’. According to (Bangladesh) Penal Code, 1860 where no sum is expressed, the amount of fine shall not be ‘excessive’. Fine is a charge upon the property of the convict ‘as public dues’ and is ‘recoverable even after his death’. It is argued by many that fine defaulter should not face automatic imprisonment if they fail to pay their fines. Authorities should pay
attention to other possible solutions to deal with defaulters. However, in Bangladesh, sentence of imprisonment may be imposed for non-payment of fine and it is not considered as illegal.

In addition to section 53, (Bangladesh) Penal Code, 1860, there are also some other categories of criminal sentencing available under Bangladeshi laws:

(f) Verbal sanctions: Verbal sanctions, such as admonitions, reprimand, warning or unconditional discharges accompanied by a formal or informal verbal sanction, are some of the ‘mildest responses’ that a court may impose upon finding a conviction. In Bangladesh, section 4, the Probation of Offenders Ordinance, 1960 states that where a first-time offender is convicted of an offence punishable with imprisonment for not more than two years then having regard to the age, character, antecedents or physical or mental condition of the said offender and to the nature and circumstances of the offence, the court, in appropriate case, may make an order discharging him after admonition. It must be mentioned that although verbal sanctions are formal sanctions, they have the effect in practice of ensuring that the criminal justice system is not further involved in the matter.

(g) Conditional discharge: Conditional discharge of convict is another form of mild sentence. However, the implementing authorities may need to set up some mechanism to ensure that the ‘discharge condition(s)’ set by a court are strictly met. In Bangladesh, again, The Probation of Offenders Ordinance, 1960 makes provision for imposing ‘an order for conditional discharge’ by the court. It is applicable to the first-time offenders who are convicted of an offence punishable with imprisonment for not more than two years. The conditions imposed by the court might include that the convict enters into a bond, with or without sureties, for committing no offence and being of good behaviour during such period not exceeding one year from the date of the order.

(h) Probation order: The sole intention of the legislature in passing probation laws is to give persons of a particular type a chance of reformation, which they would not get if sent to prison. By placing the offender on probation the courts saves him from the ‘stigma of jail life’ and also from the ‘contaminating influence of hardened prison inmates’. Probation also serves another purpose: it helps in eliminating overcrowding in jails. In Bangladesh, the first legislative piece on probation was sections 562 – 564 of the Code of Criminal Procedure, 1898. The probation of Offenders Ordinance, 1960, later repealed sections 562 – 564 of the Code of Criminal Procedure, 1898. Under the said Ordinance, a court, in appropriate cases, can make a probation order i.e. ‘an order requiring him or her to be under the supervision of a probation officer for such period, not being less than one year or more than three years’. Such
probation order at times might contain specific conditions. For a successful probation order, the convict must (a) enter into a bond, with or without sureties, to commit no offence and to keep the peace and be of good behaviour during the period of that period; and (b) satisfy the court that he (or his sureties) has a fixed place of abode or a regular occupation within the local limits of its jurisdiction. In 2005 another law on probation for women in prison is enacted for the benefit of women.

(i) Victim’s compensation order: Crime victims suffer not only physically and mentally but also financially and materially. In this regard different western countries have already in Nigeria and other African countries show that there is a long tradition of paying compensation to victims in lieu of other punishment(s) for even the most serious crimes. In Bangladesh, a criminal court while passing any sentence of fine, may order the whole or any part of the fine recovered to be applied in the payment of compensation to any person for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the court, recoverable by such person in a civil court. Very recently the Bangladesh Law Commission has realized that there is a great need for making mandatory provisions for payment of compensation and other relieves to the victims of grave offences and as such, in early 2007, the Commission prepared a Draft Bill to meet this end. As per section 6 of the Draft Bill, ‘crime victims compensation fund; will be established in each district of Bangladesh.

Similarly, victim’s compensation order, even though provided for by section 545(1), Code of Criminal Procedure, 1898, is neither mandatory nor being made effective. Moreover, the victims of criminal offences, are required to go to civil court for realizing substantial compensation, which of course requires a separate and new proceeding, payment of court fee and other expenses. Therefore, provision of section 545(1), Code of Criminal Procedure, 1898 is of no real help to the victims of crime. If compensation claims can be considered at the time of the criminal trial, this will bring victims a great relief i.e. they would be saved from the cost and trouble of bringing a subsequent civil action for realizing compensation.

Finally, there are legal provisions for some other sentencing mechanism, which are no more in practice in Bangladesh. For example, though the punishment of ‘transportation’ was deleted from the list of section 52, (Bangladesh) Penal Code, 1860 in 1985, mention of the same can still be found in section 383 of the Code of Criminal Procedure, 1898, section 5 of the Probation of Offenders Ordinance, 1960 and section 51 of the Children Act, 1974. Moreover, a number of provisions, such as, sections 391, 392, 393 and 394 of the Code of Criminal Procedure provide for the sentence of ‘whipping’.
• Compounding of Offences

The word ‘compound’ means to withdraw for a consideration or making a compromise. In Bangladesh, the law makes a difference between various classes of offences and allows compromise in some and no compromise in other. The Code of Criminal Procedure, 1898 brings out a long list of offences for which compromise can be made between appropriate parties either in the court or out of the court. A criminal case may be compounded at any time before the sentence for the same is pronounced. However, it is argued that although there are elaborate provisions for compounding of offences in such a manner, the provisions are hardly ever raised or adequately utilized. In my survey on legal practitioners, I found that almost 67.3% criminal lawyers never utilized section 345(1), Code of Criminal Procedure, 1898 in their entire practice years so far. Also in my survey on magistrates, almost 70.5% of the magistrate are of the opinion that in our criminal courts the use of section 345(1), Code of Criminal Procedure, 1898 is strikingly less frequent.

• Appellate review of Sentence

It is claimed by many that the most important factor, which contribute to the apparent inefficiency and unfairness of the judicial discretion inherent in the sentencing function, is the absence of an established tribunal to review sentences either automatically or on appeal. In Bangladesh, appeals against sentences (or against inadequacy of sentences) are possible to the superior courts, under the power given to them in the Criminal Procedure Code, 1898. Appeals from sentence imposed by the Magistrates of second or third class lie to the District Magistrates or to the first class magistrate upon direction by the district magistrates. Appeals from sentence of Assistant Sessions Judges or Magistrates of the first class would lie to the Court of Session. Appeals from sentence of the Sessions Judge or the Additional Sessions Judges can be preferred at the High Court Division. In an appeal against sentence (or against inadequacy of sentence), the appellate court must discuss the evidence on record while deciding the said appeal. However, it is argued that the scope of revision of sentencing in appeals is limited as made clear in the various pronouncements of the High Court Division. It is a common belief that the question of sentence is normally a matter of ‘judicial discretion’ of the trial court and as such, the appellant courts are reluctant to interference much with the exercise of such discretion.
7.4. SENTENCING DISCRETION AND RELATED FACTORS

Sentencing is frequently seen as one of the clearest examples of an area where judges enjoy very wide discretion. Cross believes that to ask judges why they gave a certain sentence in a particular case is strangely enough ‘an unnatural enterprise’. This is more so in Anglo-American jurisdictions, where the law itself allows the judge, when he pronounces sentence, to be completely silent on why he fixed the sentence on a particular level. Wide sentencing discretion practiced by the judges very often leads to inconsistent sentencing system. One of the most obvious support for, the criminal justice system.

In Bangladesh also, the penal law gives a wide discretion to the sentencing judges for determination of the sentence that follows the conviction of a defendant. However, the exercise of such sentencing discretion by the sentencing judges is one area that remained largely ignored by Bangladesh criminal justice system. The High Court Division observed:

‘Sentencing discretion on the part of justice is the most difficult part to perform. There is no system or procedure in (our) Criminal Justice Administration, nor any rule to exercise such discretion. It is also, not possible to lay down any cut and dried formula in imposing proper sentence. But the object of sentencing should be to see that the crime does not go unpunished and the society have the satisfaction that justice has been done.’

The factors that influence a judge to sentence strictly are the followings:

- **Legal Factors**
  - nature, facts and circumstances of the offence: The nature, facts and circumstances of the offence are said to always influence sentencing discretion. Empirical studies have shown that sentences were more severe when offences were of more serious or exceptional nature. My survey finds that about 80% of judges of Bangladesh think that nature, facts and circumstances of the offence do influence the discretion of the sentencing bench.
  - intentional motive of the offence: Absence of intention or motive in committing an offence might result in reduced sentencing. However, there are many cases, where the higher judiciary has observed that intention or motive of offence is not always required to be proved for finding a conviction and imposing a valid sentence.
  - Weapon used to commit the offence: The type of weapon used to commit the offence might at times influence the sentencing discretion. In the absence of the convict using any ‘heavy or sharp cutting or lethal weapon’, the court might reduce the sentence. However, at
times, the court might even consider a piece of stone as a dangerous weapon and go on sentencing

(d) Extent of injury/ damages caused: The sentence may reflect the extent of injury or the damages caused by the offence. It should not be too harsh or too lenient. The High Court Division observes that too light a sentence in relation to gravity of offence makes the administration of criminal justice ridiculous. Sentencing is said to follow a tariff system where great weight is given to the harm caused by the offence, as indexed by factors such as the degree of personal injury or monetary value of the stolen property. The mere fact that the victim luckily survived for weeks on account of treatment in the hospital is no ground to award lesser sentence.

(e) Extent/ degree of perversion in committing the crime: Degree of perversion might be reflected in criminal activities such as, cutting dead body into several pieces, gang rape, killing several persons etc. The court has always seriously condemned criminal activities committed in a brutal manner and it gets reflected in the sentencing parameters of the bench. Judges sometimes are influenced to give a death sentence if following factors are present:-

• Factors related to the offender

  a) Race/religion/ cast of the offender: Green argues that the sentencing judges do not get bias by the race, religion or the cast of the convict. Even empirical studies have shown that the race, religion or cast of the convict does not have significant effects on sentence severity. However, there are a number of studies, which show that social characteristics of defendants, such as race, are important in determining sentencing in the criminal courts. Also, the prison statistics in many US state jurisdictions show members of some racial groups imprisoned at a comparatively higher rate than others.

  b) Age of the offender: It is claimed by many that the sentencing judge do not get prejudiced by the age of the convict. In Bangladesh, there are judicial decisions where sentence are reduced by the appellate authorities on the ground of very old age or very tender age of the convict.

  c) Sex of the offender: Green claims that sentencing bench is generally indifferent towards the sex of the convict. Most of the judges of Bangladesh are not influenced by the sex of the offender though comparatively few women have so far been sentenced to death.
d) Employment and/or economic status of the offender: It is a common belief that economic status of the convict are important in determining sentencing in the criminal courts. People of lower occupational strata experience differential sentencing due to economic inequality. Empirical studies show that unemployed convicts are more likely to receive, discharges or imprisonment, rather than fine. It is true in case of sentencing death to the convicts in case of Bangladesh.

e) Marital status of the offender: The issue of family integration of the convict does play a crucial role in sentencing. Empirical studies also show that imprisonment is more likely if the offender is found to have not living with a spouse or parents. However, in Bangladesh, about 90% of judges do not consider this to be an important factor in sentencing.

f) Whether first time offender: In most of the criminal jurisdictions, the first time offenders do get a factorable treatment in sentencing. The bench is more likely to treat them as an accidental criminal. However, a survey result reflects that about 62% of judges in Bangladesh do not consider that first time offenders should get lenient sentence. Such finding is not surprising as we have already found in other surveys on criminal law practitioners and the magistrates that there is less sensitivity about the lenient sentencing provisions regarding verbal sanctions, conditional discharges or probation orders.

g) Whether pleaded guilty: Green finds that the sentencing judges do not favour defendants who pleads guilty over those who do not. In Bangladesh about 74% judges believe that pleading guilty might affect the sentencing desertion. Also, in the higher judiciary of Bangladesh, sentence is reduced if the convict makes an immediate voluntary confession after committing the crime.

h) Whether habitual offender: The prior criminal record of the convict might influence a sentencing decision. Empirical studies have shown that sentences get more severe when offenders have similar previous criminal record. Similarly, in the higher judiciary of Bangladesh, the court has explicitly expressed the view that habitual offenders should get serious terms.

i) Social status of the offender: The social status of the convict can get reflected in his extent of education, leadership in social group/trade/profession etc. crime is no longer perceived as that act of freely and rationally acting individuals but as the act of persons restricted by social and psychological
conditions. Social characteristics of defendant, such as race and socio-economic status, are important in determining sentencing in the criminal courts. Empirical studies have shown that sentences were more severe when offenders were of higher social status.

- Factor relates to the victims
  a) Race/religion/caste/age/sex of the victim: Empirical studies have shown that many of these factors related to the victim do not have significant effects on sentence severity. In the survey it is found that about 91% of judges do not think that race, religion, or caste of the victim carry any weight in sentencing. However, about 67% of judges believe that age of the victim might become an important factor in sentencing discretion.

7.5. Conclusion

From the above discussion it is clear that the judges of Bangladesh almost follow the same pattern like their counterparts in the developed countries while sitting over the judgement of an issue. It is not clear, however, whether cultural factors or religious inclination plays any role in their decision making. It is assumed that many of the Judges believe that imposition of death penalty acts as a deterrent in curbing crimes. In comparison with Western World, death is taken lightly in Bangladesh. The Society has been brutalised over the years. Hundreds of people die each year from road accidents, natural catastrophe, and from various diseases. Many innocent people also had been killed in political confrontations. The disciplinary forces have been accused of killings hundreds of alleged criminals in so called “cross fire”. There is no reason to believe that the Judges had not been influenced by the surrounding environment.
8. Death Penalty: Bangladeshi Perspective

8.1. Introduction

Being a third-world country, Bangladesh has not really been able to give much concentration on the issue of the death penalty. When the country is constantly struggling to maintain its law and order situation, it does not have the luxury to give required attention to highly essential legal reforms. The country is still run by the centuries old British Imperial laws. Very little development has been achieved in the effort of reforming the laws, legal procedure etc. In this circumstance the issue of whether to abolish or retain the death penalty has not really been addressed. At times different human rights organisations have raised the demand of abolishing the death penalty but not in full public. Rather the demand has been confined to the seminar table and has left very little impression to the governments.

If we look at the legal history or tradition of the legal system of Bangladesh we find that the death penalty has been in existence from the periods of the Hidu kings or before that though there was no specific set rule for executing people and a great degree of discrimination has been noticed. After the Hindu kings there came the Muslim rulers and they had the death penalty in their justice system. And in both the cases religion was the main factor in retaining the death penalty.

Nature of Hindu Law

The Hindu law is neither secular nor codified, it is mainly religious. It is a personal law and marriage, adoption, inheritance, caste, maintenance, joint-family and other religious festival and ceremonies among the Hindus will be governed by Hindu Law.

Crimes and Punishments

The philosophy of crime and punishment was based on the idea of expiation which removed impurities from the man of sinful promptings and reformed his character. Before punishment was to be awarded the judge had to consider the motive and nature of the offence, time and place, strength, age, conduct, caste, learning and monetary position of the offender.

For committing murder the murderer was to pay 1000 cows for killing a kshatriya, 100 for a Vaisya and 10 for a Sudra. A bull was given to the king as a fine for murder. If a Brahmin was killed by a person of lower caste, the murderere would be put to death and his property confiscated. If a Brahmin was killed by another Brahmin he was to be branded and banished. If a Brahmin killed a person from lower caste, he was to compound for the offence by fine. The punishments under this period was inhumane like burning alive or drowning alive, trampling by elephant or throwing to hot oil or mutilation etc.,

Crimes and Punishments under the Muslim Period

During the Muslim period Islamic Law or Sharia was followed by all the Sultans and Mughal Emperors. The Sharia is based on the principles enunciated in the holy Quran.
The Muslim law classified crimes under three heads: (i) Crimes against God (Allah); (ii) Crimes against the King (State); and (iii) Crimes against the individuals. The Muslim law considered treason (Ghadr) as a crime against God and religion and, therefore, against the State. Persons held responsible for treason by the Court were mostly punished with death. Contempt of Court was considered a serious offence and was severely punished in the Muslim period. The punishment was divided into four categories like (a) Hadd, (b) Tazir, (c) Qisas and (d) Diya. Diya is blood money for the death or killing of an innocent person to be paid to his relatives.

8.2. Views of Political Parties on Death Penalty

Bangladesh is democratic country and facilitates multi-party democracy. There are more than one hundred political parties running their activities in Bangladesh but the major ones are Bangladesh Awami League. Bangladesh Nationalist Party (BNP), Jatiya Party and Jamaat-e-Islami Bangladesh. These four parties have been in power since the Independence of the country. But it is Awami League and BNP that are leading the political arena of Bangladesh and the country is clearly divided in two political philosophies; Awami League leading the secular and liberal while BNP the nationalist Muslim philosophy, the others mainly harbouring themselves around these two powerhouses.

The Bangladesh Awami League

The Bangladesh Awami League is the mainstream secular political party in Bangladesh, and the political catalyst for Bengali discontent and rebellion in 1971. The party is now headed by Sheikh Hasina, the daughter of the late Sheikh Mujibur Rahman. The Awami League has been in government for two terms, approximately eight and a half years, since Bangladesh's independence in 1971. In the 2001 general election it received 40 percent of the vote and won 62 of 300 parliamentary seats, becoming the second-largest party in the parliament behind the Bangladesh Nationalist Party. The political ideology of is Liberalism, Secularism and their position can be called centre-left.

The Bangladesh Nationalist Party

Out of the thirty seven years of independent Bangladesh, the Bangladesh Nationalist Party (BNP) has ruled the country longer than any other party, if the Martial Law period pf Ziaur Rahman is to be included. The BNP has ruled the country for eleven years. The turbulent days of 1975 which saw military uprisings and counter-uprisings created the opportunity for the establishment of BNP. Under the government of the Chief Adviser of the caretaker government Justice Muhammed Habibur Rahman on 12 June, 1996 election to the seventh parliament was held. In this election though Khaleda Zia won in all the five seats from which she fought the election, her party could not win a majority. By winning 116 seats BNP became the largest parliamentary party in Bangladesh history.

The Jatiya Party

Though the Jatiya Party came out as a legal entity on 1 January, 1986, it had begun its activities from 24 March, 1982 while the party was at the embryonic stage of its development. On 24 March, 1982 General Ershad led a bloodless uprising which toppled the government of President Abdus Sattar. After being saddled into power Mr Ershad tried to build up a political organisation. He followed the same old pattern of formation of a
political party under the umbrella of military administration that was evidenced in the countries of the Third World, as also in Bangladesh in the past years. In the same pattern leaders of different political parties extended their hands of cooperation towards the military government. Since the Ershad government was in power for about nine years the party has created substantial position among the people.

**Jamaat-e-Islami Bangladesh**

Jamaat-e-Islami Bangladesh is the largest Islamist political party in Bangladesh. This is one of the leading political party in Bangladesh and largest Islamic party in subcontinent. The party joined in Bangladesh Nationalist Party lead government and hold two key Ministries with Khaleda Zia's government. This party played a questionable role in freedom fight of Bangladesh. However, in the present context of Bangladeshi political party Jamaat-e-Islami is well known for practicing democracy in their party activities by following own party constitution.

Regarding the issue of the death penalty, all these parties do not seem to have to any specific policy. Recently for war crimes or crimes against humanity as tried by the ICT under the ICT Act, 1973 (amended) many leaders of Jamat e-Islami was given death penalty and ‘Gonojagoron Mancha’ demanded their death Penalty. It is presumed that they got support from some quarters of the government. Nobody has probably heard Bangabandhu Mujib, President Zia or Ershad talking about abolishing or retaining the death penalty. Neither the current top leaders of the major political parties have expressed their opinions about this serious issue.

### 8.3 Views of the Leading NGOs

In Bangladesh there are quite a big number of NGOs operating but most of them are involved in development activities. Internationally famous NGOs like Grameen Bank, BRAC, ASA, PROSHIKA are mainly concentrating on the fields like microfinance, poverty alleviation etc. and they do not seem to worry about the issue of the death penalty. However, there are some NGOs dealing with law and human rights, for example Ain O Shalish Kendro, Dristipat, BLAST, BELA,Bangladesh jatiya manobadhikar Sabgsthha etc and they are vocal about abolishing the death penalty. In this case these NGOs are guided or influenced by Amnesty International which is basically the flag bearer of all human rights movements.

However, regarding death penalty awarded by the ICT Tribunal of Bangladesh, many NGO’s supported and many kept mum.

### 8.4 Views of the Civil Society

These days the civil society comprising of intellectuals and leading professional of the country come forward to analyse and criticize different social, political, national and international issues but again nothing has come from them regarding the death penalty. Some members of the society do feel that the death penalty should be abolished but their voice does not come over the surface. Many civil societies’ organizations including the National Human Rights Commission (NHRC) did not remain vocal on death penalty now-a-days as the country is passing tough time on political motivation and instability on ‘war crimes trial issues’.
8.5 Impact of Religion on the Perspective of Death Penalty

Bangladesh is a country of devoted Muslims. People are very sensitive about religious issues. They are even ready to sacrifice their lives for the sake of protecting the laws of Quran and Sunnah. As the death penalty is suggested in the Holy Quran for a number of crimes, most people are in favour of retaining it. The government, therefore, does not dare to make a move about abolishing the death penalty. Because the government knows that if it does anything against the Sharia, huge dissatisfaction will grow in the mind of the people which may in the end lead to political and social unrest. Since the government and political parties have failed to give a much needed social and political stability since the Independence in 1971, people of this poor country have really been frustrated. People do not seem to be as sensitive as they should be because they have seen political murders, military coups, clashes among the parties, mass killing, harassment at the hands of the police etc. All these have made the people sort of impatient. They do not have trust in mass enforcing agencies and overall in the legal system and this is why they have the tendency to take law in their own hands. As a result very often we see on hear about the mob killing the hijackers, dacoits and so on at different places. This shows of do not want the abolishment of the death penalty.

8.6. Conclusion

To sum up the social, political and religious conditions do allow the government to retain the death penalty. The society here is totally motivated by religious ideas which very much permit to keep the capital punishment effective. Further, being a country of huge population, the government cannot but retain the death penalty thinking it would work as a difference. And as the people categorically want to retain the death penalty, political parties do not have their own say. Rather they are interested in complying with people’s wish. This is why despite UK and EU lobbying Bangladesh retains the death penalty. To improve the situation, however, Amnesty International urges the leaders of all political parties and members of the civil society to state their opposition to the death penalty and executions in the country and urges the government to impose a moratorium on the death penalty with a view to moving towards its abolition as a matter of priority. Still many countries and peoples motivated by political and religious ideology supported death penalty for heinous crimes.
CHAPTER NINE

Conclusion

It may be reiterated that capital punishment is undoubtedly against the notions of modern rehabilitative doctrine of treating the offenders. It does not offer an opportunity to the offender to reform himself. That apart on account of irreversible nature many innocent person may suffer irredeemable harm if they are wrongly hanged. As a matter of policy, the act of taking another’s life has no justification for a State except in extreme cases of dire necessity and self-preservation in war.

History of Bangladesh is a chronology of violent acts.\(^{42}\) The presence of two religious communities Muslims and Hindus often resulted in religious riots during the time when Great Britain was governing the country. It was reflection of the policy of Governance of the British Raj often named as the “Policy of Divide and Rule.” When the British withdrew from the sub-continent it witnessed horrible riots in which thousands of people died. In 1971 Bangladesh through a bloody war emerged as an independent country. Young people fought in the war. They were trained to use the weapons effectively. Immediately after war, because of job scarcity, poverty, disorganisation the whole country witnessed a rise in the crime rate. The Government responded by introducing laws with death penalty to curb the rising crime rate. In 1975 the nation witnessed the killing of Father of the Nation Sheik Mujibur Rahman by group of young army officers. Many of the family members, including his three sons and wife were brutally murdered. After a few days, top four leaders of the Awami League were killed inside the prison. These incidents had serious impact on the mass psychology. People became psychologically apathetic towards such killings. Martial Law was imposed on the country in 1975. Martial Courts were established throughout the country. The Civil Procedure- the procedural law for deciding and judging issues was sidelined. Instead summary trial was introduced for quick disposal of cases. Death Penalty was given for offences committed for violation of Martial Law orders. In 1977 civil Government was introduced under the leadership of General Ziaur Rahman. In 1981 General Zia was assassinated by a group of Army officers. Martial Law was imposed for the second time in 1982. All throughout the period during which General Ershad was in power there was popular movement against the regime. A popular movement overthrew Ershad from the sit of power in 1991. Much awaited democracy was introduced and after a victory in the general election Khaleda Zia led Bangladesh Nationalist Party formed the Government. Party thugs started terrorising political opponents. Cycle of violence gained momentum. In 1996 Awami league won the general election. During the governance of Awami League rule of Law virtually collapsed. Regional war lords started controlling the lives of people. People were brutalised. In 2001 election Bangladesh nationalist Party again returned to power. The five years of rule by the party was a disaster for the country in some sectors. The crime rate increased, corruption became an international concern. In order to curb the spread of organised crime the Government established Rapid Action Battalion (RAB). Criminals and/or alleged criminals were given death penalty in the name of ‘cross fire’ without a trial. When in 2006, the BNP Government stepped down from power handing over the reins of the governance in the hand of Caretaker Government country was heading towards civil war which became an international concern. In 2007 a military backed civil government was

\(^{42}\) An alarming number of countries that used the death penalty in 2014 did so in response to real or perceived threats to state security and public safety posed by terrorism, crime or internal instability.
given the responsibility to run the country till it can arrange to transfer power through a fair and free election. They also abused power and their Boss General Moin U Ahmed and Fakhruddin Ahmed left the country and did not come back for the last 7 years after the Present Awami League retained power in 2009. Disappearance, extrajudicial killings and death Penalty for war criminals was burning issue for the whole period of this government and still instability mounted with special controversy for free and fair election need to be held. The last general election in 2014 caused death of hundreds of peoples and law enforcing agencies as well.

From the discussion above, it is clear that very few people really are concerned with the issue of death penalty. There are other urgent issues. The society has undergone a process of criminalisation. The successive Government has introduced death penalty to combat various crimes. Exemplary punishment in the form of death penalty had been met out to criminals to discourage criminals from committing such crimes with little effect. In 2012, 682 death sentence was executed in 21 countries and 58 countries awarded death sentences to 1722 accused. In China thousands are executed every year for various offences from corruption to anti-state activities. 314 was executed in Iran and 129 in Iraq only in 2012. 43 accused was executed in the USA in 2012. In 2014, 22 countries around the world carried out executions. A number of 2,466 persons or accused was sentenced to death which is up 28% on 2013. It is found from amnesty international website (at www.amnesty.org/deathpenalty) that upto July 2015, 101 countries abolished death penalty. The death sentence of one Shukkur Ali of manikganj in a review petition to the Appellate Division of the Supreme Court of Bangladesh (article-103) was reduced to life imprisonment who was punished on July 12, 2001, by the Manikganj’s Women and Children Repression Prevention Court that found him guilty and sentenced him to death.

In our opinion, death penalty does not stamp out crime. It is a pseudo-solution that diverts attention from the measures needed to prevent crime, by creating the false impression that a decisive measure is being taken. The death penalty does not protect society, but rather distracts attention from the urgent need for methods of effective protection which at the same time uphold and enhance respect for human rights and life. In Bangladesh, we should concentrate on removing the causes for such heinous crime that calls for imposition of death penalty. Assuming that the guilty party's identity and responsibility have been fully determined, the traditional teaching of the religion does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor. If, however, nonlethal means are sufficient to defend and protect people's safety from the aggressor, authority will limit itself to such means, as these are more in keeping with the concrete conditions of the common good and are more in conformity to the dignity of the human person. Today, in fact, as a consequence of the possibilities which the state has for effectively preventing crime, by rendering one who has committed an offense incapable of doing harm - without definitely taking away from him the possibility of redeeming himself - the cases in which the execution of the offender is an absolute necessity are very rare, if not practically nonexistent.

43 Where “+” appears after a figure next to the name of a country – for instance, Yemen (22+) – it means that this is the minimum figure calculated by Amnesty International. Where “+” appears after a country name without a figure – for instance, death sentences in South Sudan (+) – it means that there were executions or death sentences (more than one) in that country but insufficient information to provide a credible minimum figure. When calculating global and regional totals, “+” has been counted as 2, including for China.
Our feelings and views are aptly expressed by Citizens United for Alternatives to the Death Penalty (CUADP). They are opposed to the death penalty, believing "that as a society we are obligated to do better than to respond with a gut primal response, regardless of how natural that response may feel...our justice system is currently a retributive justice system which only heightens the pain and deepens the wounds of the families of victims of murder, the families of perpetrators, and the perpetrators themselves." They suggest that individuals convicted of capital murder be incarcerated for at least 25 years before being considered for parole. During that time, they should be required to work at "jobs which are not slave-like and allow for some dignity and purpose of life." Part of their earnings would pay for their imprisonment, and another part would go to a restitution fund that would help victims of crime and the families of murder victims. No state has created such a restorative justice program.

The President of Bangladesh has all the authority to grant mercy for any offences including death penalty under article 49 of the constitution which is supported by the Penal Code sections (55-58) and the Code of criminal Procedure (sections 401-403) and also in many other special laws. Death Penalty is opposed on many grounds such as irreversible and mistakes happen, do not deter crime, often used within skewed justice system, discriminatory and often used as a political tool. The President is therefore, as guardian of the state, must use his prerogative of mercy power to ensure justice.

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Please visit: Amnesty’s latest annual review of the death penalty worldwide.

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