

**The Doctrine of Capital Punishment:
An Analytical and Comparative Study of
International Human Rights and Shariah**



LLM (SHARIAH AND LAW)

Submitted by:

NASIR AMIN

Registration No.71-FSL/LLMSL/F21

Supervised by:

DR. HAMID ULLAH RIZWAN

Assistant Prof. Shariah

DEPARTMENT OF SHARIAH

FACULTY OF SHARIAH & LAW

INTERNATIONAL ISLAMIC UNIVERSITY ISLAMABAD

THE DOCTRINE OF CAPITAL PUNISHMENT: AN ANALYTICAL AND COMPARATIVE STUDY OF INTERNATIONAL HUMAN RIGHTS AND SHARIAH

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By

Nasir Amin

Registration No.71-FSL/LLMSL/F21

Supervised by

Dr. Hamid Ullah Rizwan

Assistant Prof. Shariah

**DEPARTMENT OF SHARIAH
FACULTY OF SHARIAH & LAW**

Nasir Amin

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Dedication

**To my teachers and parents,
With undying appreciation.**

Approval Sheet

This is to certify that the thesis entitled “THE DOCTRINE OF CAPITAL PUNISHMENT: AN ANALYTICAL AND COMPARATIVE STUDY OF INTERNATIONAL HUMAN RIGHTS AND SHARIAH” submitted by Nasir Amin, Reg. no. 71-FSL/LLMSL/F21 has been examined in accordance with the laid down standards and has been found to meet the requirements of awarding the degree of LLM in Shariah and Law.

Supervisor:

Dr. Hamid Ullah Rizwan _____

External Examiner:

Internal Examiner:

Declaration

I, **Nasir Amin**, confirm that this dissertation is an original piece of scholarly work not previously submitted anywhere as required by the guidelines of academic integrity. Any secondary material that is used is properly cited and credited.

Student: **Nasir Amin**

Signature: _____

Date: _____

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Without the constant guidance and support of a few scholars, co-workers, and relatives, the current thesis would not have been finished. This is done by my supervisor, Dr. Hamid Ullah Rizwan, Assistant Professor of Shariah and Law, first of all, whose expertise was vital in the course of research. His advice proved very valuable in solving many methodological and conceptual problems that arose during the study.

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I am very thankful to their contributions.

May Allah bless them All.

Abstract

Death penalty is an acutely controversial topic in the modern jurisprudence. The concept of the death penalty has an ancient history (it was based on divine, moral and political tradition), which developed during the history of mankind as a religious punishment in early civilization to an official tool of a legal system of justice applied by the state. Although it used to be utilized in most countries across the world in dealing with a wide variety of crime, current law still has mounting pressure to test the basis of its validity with respect to human rights laws.

In this thesis, it is hypothesized the particular issue of capital punishment and this particular question is further investigated as it is stated: Is it possible to justify death penalty in contemporary law regimes, and especially inside the framework of “International Human Rights Law” and Islamic Shariah? The study employs the doctrinal and comparative legal approach, in that, in addition to the primary sources such as international treaties (UDHR, ICCPR), texts of the Quran, Sunnah, and classical jurisprudence works, the current scholarly thought and jurisprudence are taken into consideration.

The thesis commences with the historical development of death penalty and philosophical justification of its usage both in the Western world and Islamic society. It then cross-examines the major positions of Retentionists, who believe in the use of capital punishment as a deterrence and a form of retributive justice, and the Abolitionist who oppose on basis of human rights, likelihood of setting innocent people, and moral reasons. In addition, the thesis seeks to understand how the Islamic law and its objectives Shariah (Maqāṣid al-Sharī‘ah) treats the capital offences; murder, adultery, and apostasy with focus on procedures and safeguards.

This study has come to the conclusion that although Shariah does permit capital punishment in very specific and narrow circumstances, it also emphasized justice, mercy, and life preservation. On the contrary “International Human Rights Law” is moving towards abolition. The thesis eventually suggests a reconciliation method that does not question religious teachings but still follows the emerging global trends of human rights in order to advocate justice and rule of law.

Keywords: Capital Punishment, death penalty, Retentionists, Abolitionists, International human rights (IHR), Shariah

List of Abbreviations

UNO	<i>“United Nations Organization”</i>
UDHR	<i>“Universal Declaration of Human Rights”</i>
ICCPR	<i>“International Covenant on Civil and Political Rights”</i>
ICESCR	<i>“International Covenant on Economic, Social and Cultural Rights”</i>
CEDAW	<i>“Convention on the Elimination of All Forms of Discrimination Against Women”</i>
CRC	<i>“Convention on the Rights of the Child”</i>
CP	<i>“Capital Punishment”</i>
GAR	<i>“General Assembly Resolutions”</i>
SCR	<i>“Security Council Resolutions”</i>
HRCR	<i>“Human Rights Council Resolutions”</i>
CAT	<i>“Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”</i>
ICRMW	<i>“International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families”</i>
CRPD	<i>“Convention on the Rights of Persons with Disabilities”</i>
OIC	<i>“Organization of Islamic Cooperation”</i>
ACHPR	<i>“African Charter on Human and Peoples' Rights”</i>
UNHRC	<i>“United Nations Human Rights Council”</i>
ICJ	<i>“International Court of Justice”</i>

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INTRODUCTION TO RESEARCH

Thesis Statement

In addition to being a signatory to international agreements like the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which hold that the death penalty is unjustified and goes beyond the bounds of international human rights standards, Pakistan's constitution guarantees that no law shall be made in violation of the Quran and Sunnah. As a result, it is imperative that the death penalty be examined in the context of Shariah and international human rights in order to satisfy the demands of the modern world.

Introduction

“Capital punishment” or “death penalty” is a government-authorized punishment in which a person is sentenced to death by the state as a punishment for an offense. Capital punishment has been in practice from ancient ages and executing criminals and offenders was part of the judicial system of nearly all the societies.¹ On the other hand, putting someone to death is a punishment that is irrevocable and cannot be undone or reversed once executed. Besides, it is claimed that it is an inhuman sentence and against the human dignity which is a basic right given by the UDHR (“Universal declaration of human rights”).² Hence, the death punishment was suspended in the UK in 1965 and finally abolished in 1969. The Murder (Abolition

¹ Schabas William, The abolition of the death penalty in International Law, pp.223-224, Cambridge uni. Press

² Franklin E. Zimiring, The contradiction of American capital punishment, pp.28-29, Oxford university press

of Death Penalty) Act, 1965 of the parliament of the UK has obliterated the death penalty in the UK.³

Capital punishment, known as the death penalty, is one of the most disputable issues all over the world. Opponents of it who believe that it should not be used argue that it is one of the most inhumane punishments possible and it violates the right to life. In contrast, Retentionists are of the view that the death penalty is rational since it can be used to control crime rates as well as maintaining safety of life. Owing to this contradiction of practice, the issue of capital punishment always generates heated discussion worldwide.

New trends seem to relate to abolition. More than a vast majority of nations have either abolished the death penalty or reduced the number of allowances to such a limit that, in reality, it is non-functional. However, in majority of Muslim states, it continues to work because it is approved under the Islamic law. This fact vitally raises a question that is whether or not it is possible to have the death penalty removed in the field of Islamic jurisprudence itself as well as at the same time in judicial system of Pakistan which is required to conform with international standards of human-rights as framed by the United Nations.

This study looks at the said question. It considers Islamic principles of law and the international system of human-rights, and gives arguments on why the law should and should not be imposed against capital punishment. The research then puts weight on these arguments and provides a judgment as to which course of action amounts to the most appropriate.

Literature Review:

³ www.legislation.gov.uk/ukpga/1965/71

Literature which has been reviewed by the researcher and was the source for the completion of dissertation is of various types which are provided herein below:

The primary materia of Islamic Law and jurisprudence have discussed the penal system of Islam and capital punishment, but it was not discussed in the context of the modern notion that death sentence should be completely abolished.

In contemporary times, the books of western writers such as “An eye for an eye”, by Stephen Nathans, “Morality and the law”, by Abraham Gerald, “Immorality; crime and treatment”, by Baylis have discussed the issue, but there is no substantial discussion about Islamic law.

Few books such as “Offences and Penalties in Islamic Law”, by Safia M. Safwat, “Sharia law and the death penalty: would abolition of the death penalty be unfaithful to the message of Islam?” By Michael Mumisa et al. “Islam and the Death Penalty”, by William A. Schabas have discussed the issue but they relied on secondary sources. In my research I will be referring to the primary material of Islamic law.

A book “Islam and the Death Penalty”, written by William A. Schabas says, “capital punishment is a mandatory penalty under the Shari'a for only a small category of crimes. It was plainly incorrect to assert, as some Islamic states attempted during the negotiations surrounding the adoption of the Rome Statute, that there was some principle at stake, because Islamic law in no way mandates capital punishment for the crimes falling within the jurisdiction of the International Criminal Court, namely, genocide, crimes against humanity, and war crimes.”

He further iterated that “it seems unarguable that the crimes for which Islamic law mandates the death penalty-adultery and apostasy-cannot by any effort at interpretation be deemed to be the "most serious crimes" for which the death penalty may be imposed in accordance with Article 6(2) of the International Covenant on

Civil and Political Rights. In interpreting the provision, the Human Rights Committee has stated that imposition of the death penalty for crimes that do not result in loss of human life is contrary to the Covenant.”

William’s focus is on the notion that Islam encourages forgiveness and restitution as an alternative to the capital punishment. He tried to indicate that Sharia law could be upheld even executions of capital punishment are not carried out. He says that the concept of *Dharurah* could be applied to this issue.

Another book “Crime and Punishment in Islamic Law” written by Rudolph Peters is about crimes and punishments. He states: “There are conflicts between Islamic criminal law and international human rights law.” Looking at the latest report presented by Amnesty International, he states: most Islamic punishments are cruel, inhuman or degrading. It is also true that certain ways of carrying out the death penalty e.g. stoning also belong to the same category. The main consideration of the modern criminal law is straightforward enough that there must be no crime that a person can be convicted of and subsequently punished thereof unless that crime is properly defined and its punishment spelt out in national or international law. States who consider this concept as rudimentary human-rights law enshrined it in Article 15 of ICCPR. However, most of the same governments neglect it by practicing the Islamic criminal law.

That principle was never employed in classical fiqh, on which instead rested reliance on *tazīr* and *siyāsa*, that is, on any act being punished through its being declared by a court or some state official to be either a sin or against the good or the interests of the people or the state.

Blasphemy—or, in classical doctrine, insulting a prophet (sabb al-nabī)—remains a serious offense, punishable by death. These or comparable acts are defined as criminous in some of the Sharia penal codes. This legal construct can go hand in hand with the freedom of religion when it is consistently applied despite variation in religions. However, when enforcement is targeted at some classes there is a violation of that freedom as is the case in Pakistan that applies blasphemy laws against members of the Ahmadiyya movement.⁴

Mohamed 'Abdulla Selim El-Awa's thesis, "The theory of punishment in Islamic law," dives into the philosophy of punishment under Islam. According to him, punishment on apostasy may occur on the basis that it is usually accompanied by acts that are likely to undermine the security of the state. When we compare how an Islamic law treats apostasy with the reactions of the modern legal systems to treason, we may better understand why the Muslims can find this punishment as an appropriate one. In its essence, the two approaches are targeted at protecting the society against detrimental conditions.⁵

A publication "Sharia law and the death penalty: would abolition of the death penalty be unfaithful to the message of Islam?" By Michael Mumisa et al. states that "Islam undeniably provides for the death penalty as part of its criminal justice system, its scope, however, is considerably more limited than certain Islamic states would have the international community believe.⁶ The research aimed to demonstrate that the death punishment is not necessary under Sharia law and obliteration would not be compatible with Islam."

⁴ Ibid, p.180

⁵ Mohamed 'Abdullah Selim El-Awa, The theory of punishment in Islamic law, p.145

⁶ Michael Mumisa et al., Sharia law and the death penalty: would abolition of the death penalty be unfaithful to the message of Islam?, p.33

Research Objectives

To complete my thesis, I am unravelling capital punishment through its historical, legal, and philosophical framework in a secular and an Islamic context. I am also comparing the treatment of the issue in Shariah and the “International Human Rights Law”, by their ethical and legal principles, and determining in what areas the approaches to the problem coincide or diverge. Lastly, I am considering the case against abolitionists and retentionists and suggesting a compromise in which the justice, human dignity and the needs of the community should be the top priority.

Research Questions:

To achieve the research objectives, the following research questions are formulated:

1. What is the doctrine of capital punishment?
2. What are the Shariah standards regarding capital punishment?
3. What are the international human rights standards regarding capital punishment?
4. Whether “International Human Rights Law” standards of capital punishment are compatible with that of Shariah law or not?

Research Methodology

This research comes in the line of comparative and descriptive studies. I have adopted a qualitative strategy, more of a legal doctrinal investigation. Since, it is a library based study it explores, explains, examines, analyzes, presents and compares, systematically, the facts, principles, provisions, concepts and theories on capital punishment in its abolition amid the English and Islamic legal system. All the phases involved in the doctrinal research needed in the project have been implemented whenever the need to do so occurs.

CHAPTER 1

THE DOCTRINE OF CAPITAL PUNISHMENT

Introduction to the doctrine of capital punishment

Capital punishment colloquially known as the death penalty is the state-authorized killing of individuals found guilty of severe crimes and is dated thousands back years ago. It was necessary to foster the ancient societies since they depended on it to promote stability of the people and met the individual regarding gross misbehavior and served as a deterrent against future crime. Nevertheless, modern reality instead is non-homogenous in its use: there are examples of societies that forbid it altogether along with instances of those societies that just as well retain it on the statute books and even practice it.

They have their way, but nonetheless, nations are always faced with dilemmas of morality, fairness, and the duty of a state to punish. On the one hand, the supporters claim that the death penalty is an efficient message concerning the gravity of homicide or other massive transgressions, a suitable penalty to the worst of the worst, and also that it may discourage killers in case they feel that they will not avoid capital punishment. The opponents will argue that the death penalty is immoral, and there is the possibility of wrongful convictions besides being irreversible once it has been executed. This volley indicates a profound and sophisticated discussion about justice, human rights and the necessity of the states

to maintain the responsibility and discretion. Before we go deeper we must know some basic terms of the topic.

Doctrine

According to the Merriam-Webster dictionary:

"Doctrine is a principle or position or the body of principles in a branch of knowledge or system of belief."⁷

It is further described as a statement of fundamental government policy especially in international relations. The doctrine represents fundamental ideas or guidelines within a specific field of study or belief system.

The Oxford English Dictionary defines that:

"Doctrine is a belief or set of beliefs held and taught by a Church, political party, or other group."⁸

Here the doctrine of capital punishment encompasses the underlying principles, ethical considerations, legal justifications, and practical implications of the death sentence.

Capital

The word "capital" has multiple meanings depending on the context. As a noun, "capital" refers to a city serving as the seat of government or administrative center. "Capital" also refers to wealth, financial assets, or resources used in business or investment. In the context of punishment, "capital" relates to the most severe or ultimate form of punishment, namely death.⁹

Punishment

The word "punishment" means the imposition of a penalty for an offence.

⁷ Merriam-Webster Dictionary, www.merriam-webster.com/dictionary/doctrine

⁸ Oxford English Dictionary, www.oed.com/view/Entry/56013.

⁹ Ibid. word 'capital'

Capital Punishment

Capital punishment that is interchangeably used with death sentence is a government-authorized practice whereby a person is put to death by the state as a punishment for a crime.

Capital crimes

Capital crimes or capital offences are the crimes that can result in a death penalty, like murder, treason etc.

International Human Rights

Talking of the international human rights we in fact speak about the fundamental rights and freedoms which every individual has, without taking into account his nationality, ethnicity, religion, or other aspects. These rights are secured and guaranteed by the international law- as the combination of treaties, customary international law and general principles. Foundational texts such as the UDHR that was adopted by the United Nations in 1948 and later treaties such as the ICCPR, and ICESCR provide a detailed outline of how human dignity should be treated and how the core freedoms are guaranteed to be secured all over the globe.

Shariah

Shariah, referred to as Islamic law, encompasses a comprehensive system of principles and guidelines derived from the *Quran*, the *Hadith*, *Ijma*, *Qiyas* and other foundations.

Historical overview of capital punishment

Capital punishment is as old as society and looking back at its history reveals the extent to which it has been used-and how diverse. It was already used in ancient times like in Egypt, Greece, and Rome where people were hanged, drowned, burnt,

beheaded, crucified and put into combat with gladiators. Death penalty was introduced in the law long ago as seen in early historical writings and even primitive groups of society.

The Egyptian sources are suggestive of the fact that in this country, capital punishment was considered to be a tool of justice. Criminals were faced with hanging, drowning, or even burning, and this befitted the crimes they committed in addition to the weight that the authorities gave to crimes. Greeks and Romans took a similar path, where each of the civilizations adopted methods of execution depending on the nature of the crime in question. The Romans especially employed the death penalty to deal with a wide range of offenses, and the practice was predetermined by the Draco Code in the ancient Greece.¹⁰

On the way, the code of Hammurabi and the Torah and the Bible also outline the scenarios such as the case of murder as the scenarios in which capital punishment could be imposed.¹¹ The death penalty is still in the books among other things such as adultery, apostasy and, of course, murder, under Islam.¹²

Capital punishment in Europe was prevalent throughout the Middle Ages. Hanging was the main order of the day but there was still burning at the stake and the others. In the 17th and 18th centuries, American colonies integrated capital punishment as a judicial method of punishment with the borrowing of the Continental European paradigm.

The death penalty has been pendulating back and forth for a long time history, but then it gradually slipped behind the scene since the 18 th century. In such time, citizens began advocating less violent means of executing those who perpetrated

¹⁰ Robert; A history of Ancient Greece, Draco and Solon Laws

¹¹ Schabas, William; The abolition of the death penalty in International Law

¹² Shahid M. Shahidullah; Comparative criminal justice system: Global and local perspectives

evils, and as society increasingly changed its views on death, executions started to become less essential. Nonetheless, various nations still supported the use of death sentence against such crimes as murder, treason and witchcraft.

When modern nation states and rational choice theory, a utilitarian approach to criminology, emerged, the notion of abolition of death penalty arose. Cesare Beccaria, (1738–1794) was the first who in his book “On Crimes and Punishments” “condemned torture, death penalty and demanded for the abolition of it. He said that there was no justification for the state-authorized loss of life”.¹³

The argument reignited in the 20th century. Some countries simply outlawed capital punishment in recognition of the heavy moral concerns surrounding killing someone in government approved vengeance. Other rules retained it in the rulebook but significantly limited its application to a reduced list of crimes. The United States remained an exception, not stopping its executions process but, on the contrary, increasing it during the mid- and late 1800s. However, by the late 1900s, an increasingly loud voice of objectors referenced the flaws of the system and advocated less extreme options.¹⁴

These changes occur within a larger context of discussing how society should treat one another and what justice we should pursue. To an increasing degree, the point made by people involves the insistence that life matters should prevail, punishment should be less about retribution, but instead more about rehabilitation, restorative effects, and self-development.¹⁵

The history of capital punishment is long, so one should not think that the discussion about the benefits, expenses, and outcomes of capital punishment came to its end.

¹³ Franklin E. Zimring; The contradiction of American capital punishment

¹⁴ Zimring, Franklin E. *The contradictions of American capital punishment*. Oxford University Press, 2004.

¹⁵ Ibid

Ethical issues, moral issues, and legal issues continue to press individuals (researchers, policy makers, and ordinary citizens) to reconsider the issue. The center of discussion is fairness, how punishment ought to be, whether it actually is a deterrent to crime, the possibility of sending an innocent person to the gallows and the conflict with fundamental human rights.¹⁶

These tensions have to be addressed by the criminal justice systems even today. When the concepts of what the society considers as just evolve and new laws are drafted, even states that used to use the death penalty as a form of justice begin to question it. Such organizations as the United Nations are giving greater force to an international or global termination and are just inviting a profound reevaluation of the moral, ethical, and legal aspects of capital punishment.¹⁷

The current debate in the 21st century is not dormant by itself at all. There are enough countries that use death penalty, but there is an intensifying argument to abolish that punishment completely. Many nations have started to tip towards abolition, influenced by the stronger human-rights norms, new non-carceral alternatives and a growing emphasis on reform and restorative justice. Even today, the practice is still widely practiced in most regions across the world, indicating that the world is still a divided one.¹⁸

In the past several years, additional states have shifted the punitive sights into the abolishment of death penalty exhibiting greater practices in regard to human rights, alternatives of punishment and concepts of rehabilitation and restorative justice.

¹⁶ Steiker, Carol S., and Jordan M. Steiker. "The seduction of innocence: The attraction and limitations of the focus on innocence in capital punishment law and advocacy." *J. Crim. L. & Criminology* 95 (2004): 587.

¹⁷ McLeod, Allegra M. "Prison abolition and grounded justice." *UCLA L. Rev.* 62 (2015): 1156.

¹⁸ McGann, Anthony J. and Wayne Sandholtz, 2012. "Patterns of death penalty abolition, 1960-2005: domestic and international factors1", *International Studies Quarterly*(2), 56:275-289. <https://doi.org/10.1111/j.1468-2478.2011.00716.x>

And there are still places where we practice capital punishment so we can be reminded that the world is divided on this aspect.¹⁹

Arguments on death penalty bring together several issues in our everyday discussion. Human rights, possibility of incorrect convictions, morality of state-killing, whether or not capital punishment acts as a deterrent, wider cultural and social contexts within which execution is applied are among the issues people may ask²⁰.

In order to comprehend such contemporary arguments, it may be prudent to traverse the historical background of capital punishment. Anyone, who would like to engage in an informed discussion of the present and future of this issue, can just start by looking at the way things have changed over the centuries and indeed particularly in the 20th century when in fact some countries have actually banned capital punishment or at least have made it stricter²¹.

In brief, composition of the capital punishment is long and complex and touches upon a great variety of procedures and opinions. This practice has been under review and assessment since the ancient times to date. In the course of the 20th century, the attitude of the society and the government shifted significantly: in some states, it was prohibited altogether, in others, the restrictions were put on its consumption to a considerable extent.

Methods of execution of capital punishment in the world

¹⁹ Steiker, Carol S. "Capital punishment and American exceptionalism." *Or. L. Rev.* 81 (2002): 97.

²⁰ Matthews, Roxann. "We like to Talk about Wrongful Convictions, but Does the United States Produce" Rightful" Convictions?." *Seattle J. Soc. Just.* 21 (2022): 165.

²¹ Garland, David. "Sociological perspectives on punishment." *Crime and justice* 14 (1991): 115-165.

The method of execution used for capital punishment has varied throughout history and across different jurisdictions²². Upon examination of the mode of carrying out capital punishment, we also discover that certain methods in some countries evolved throughout time and also between countries. Despite the advancement of methods that result in less pain endured, death-penalty remains a controversial and largely miscomprehended issue that has been debated over the last several decades. To see the problem of execution through ethical, moral and practical lenses, it is worth looking back at the history and evolution of the methods used in the practice, as many people consider it to be an outdated practice.

The History of Execution Methods

History shows the first of the execution procedures date back to ancient societies. In Babylonia, as an example, there were sentences of drowning, burning and dripping to death at the hands of wild animals for convicted criminals²³. Greek and Roman cultures also practiced capital punishment which revised and perfected the methods they got; there were hanging, beheading, and crucifixion among others²⁴.

Stoning was regularly used in Muslim nations, but even worse methods were invented during the period of the Middle Ages: in some regions of Europe, one could burn heretics, boil criminals, or hang them in four directions²⁵. These performances were supposedly to frighten the people as well as to prevent crime.

In the eighteenth century, people began to change their perceptions, and the humane methods of execution began to spread. Hanging was the most popular practice

²² Garland, David, R. McGowen, and M. Meranze. "Modes of Capital Punishment." *America's Death Penalty: Between past and Present* (2011): 30-71.

²³ Frilingos, Christopher A. *Spectacles of empire: Monsters, martyrs, and the Book of Revelation*. University of Pennsylvania Press, 2013.

²⁴ Kucharski, Jan. "Capital Punishment in Classical Athens." *Scripta Classica* 12 (2015): 13-28.

²⁵ King, Peter. *Punishing the Criminal Corpse, 1700-1840: aggravated forms of the death penalty in England*. Springer Nature, 2017.

introduced in England, which ousted such practices as burning at the stake. Electric chair and gas chamber were used in United States in 1890 and 1924 respectively. The latest of them all, which is the lethal injection, was introduced in 1977²⁶.

The Ethics of Execution Methods

Before any other ethical question arises when the society is considering the issue of capital punishment the issue of which execution mode should be adopted arises. An example is hanging versus lethal injection: some will claim that hanging is more humane since it is faster and causes less pain upon death and others will point out that lethal injection is more humane since it is unlikely to cause suffering²⁷. Because neither of the two arguments appear to be right at first sight, society should find its own response, and factors like safety, respect to human dignity, and people opinion should be taken into consideration.

In retrospect, methods of execution have evolved with time according to values, cultures and legal systems of every time. As an example, during old times hanging became the most widespread way of execution in ancient Greece, whereas Romans often used crucifixion. The electric chair actually challenged hanging as the most common execution method in the USA briefly, but in its turn, it was replaced with the lethal injection. In other words, the changes in the methods of execution are the reflection of the changing moral compass in every society.

²⁶ SEITZ, TRINA N. "The penalty of death as a formal sanction for certain." *Handbook of Death and Dying* (2003): 357.

²⁷ Berry III, William W., and Meghan J. Ryan. "Cruel Techniques, Unusual Secrets." *Ohio St. LJ* 78 (2017): 403.

Classification of Offences and Application of Capital

Punishment

In ancient societies, criminal offences were classified based on the harm that they cause. And then the division of offences between offence against the person, and offence against property²⁸. It is a very different scenario now as we fast forward, and the picture is much more complicated. The extent of crimes is greater in the world and the very essence of crime is also evolving. Due to this, it has made sorting out offences quite difficult²⁹.

A way of doing this is by ranking the offences according to their severity. Under this system there are three large buckets in to which crimes are categorized and these are felonies, misdemeanours and violations³⁰.

Felonies

The worst type of crime is felony. They bear prison sentences of over one year and in some cases they might be punishable by death. Examples of felonies are murder, rape, robbery and burglary.³¹

Not all felony crimes are punishable by death penalty, though, every legal system has its own regulations. European criminal law recognizes the possibility of capital punishment being imposed after the stricture of criminal procedure. Blasphemy,

²⁸ Omale, D. J. O. (2006). JUSTICE IN HISTORY: AN EXAMINATION OF AFRICAN RESTORATIVE TRADITIONS AND THE EMERGING RESTORATIVE JUSTICE PARADIGM. *African Journal of Criminology and Justice Studies: AJCJS*, 2(2), 33.

²⁹ Douglas, John E., Ann W. Burgess, Allen G. Burgess, and Robert K. Ressler. *Crime classification manual: A standard system for investigating and classifying violent crime*. John Wiley & Sons, 2013.

³⁰ Stalans, Loretta J., Paul R. Yarnold, Magnus Seng, David E. Olson, and Michelle Repp. "Identifying three types of violent offenders and predicting violent recidivism while on probation: A classification tree analysis." *Law and human behavior* 28, no. 3 (2004): 253.

³¹ Lee, Evan Tsen, Lynn A. Addington, and Stephen M. Rushin. "Which Felonies Pose a Serious Potential Risk of Injury for Federal Sentencing Purposes." *Fed. Sent'g Rep.* 26 (2013): 118.

treason, apostasy, and the Combination of certain crimes. Within Islamic jurisprudence, ḥadd and qīṣāṣ offences and other heinous crimes can be punished by death.

Any felony is serious and it all depends on three main factors namely the nature of the offence, circumstances under which it took place and the criminal history of the offender. A felony may occasionally be transformed to a misdemeanour in case a criminal can prove that he or she was not aware that his or her actions were unlawful. In some cases, a felony can be downgraded to a misdemeanor if the offender is able to prove that they were not aware that their actions were illegal³².

Misdemeanors

Misdemeanors are in the middle of violations and felonies. They are punishable with a year of imprisonment, and it may also be accompanied by a fine. There are certain typical misdemeanors that include assault, theft, and disorderly conduct.

The seriousness of a misdemeanor on paper is a product of a number of factors which include the ingredients of the offence, the circumstances in which the act is committed and the criminal history of the offender. In case the individual already has a record or the crime is surprisingly violent, but not to the extent that the death penalty must be contemplated, the case can be escalated to a felony³³.

³² McCord, D. (2009). Should Commission of a Contemporaneous Arson, Burglary, Kidnapping, Rape, or Robbery Be Sufficient to Make a Murderer Eligible for a Death Sentence-An Empirical and Normative Analysis. *Santa Clara L. Rev.*, 49, 1.

³³ Kohler-Hausmann, Issa. "Misdemeanor justice: Control without conviction." *American Journal of Sociology* 119, no. 2 (2013): 351-393.

Violations

At the lowest end of the ladder of offence are the violations. They are normally fined and may involve community service. Violation is committed by traffic violations, littering and public intoxication.

The more seriousness of a violation once again depends on its ingredients and the circumstances under which it takes place. Occasionally a violation may be punishable as a misdemeanor when the offender has a prior record, or when the offence is exceptionally serious³⁴. Violations do not subject an offender to jail and they cannot be capital punishable in any legal system.

To summarize, the death penalty is used only on the most serious form of crime; this is the felony crimes that include the willful killing or a crime that poses a significant risk to the security of the people or the country. On the less serious side of the spectrum, there are misdemeanors and violations.

Sentencing Goals in Criminal Justice and Their Application to Capital Punishment

Objectives of Sentencing

Sentencing is part of the fabric of the criminal justice system as the state establishes the penalty on individuals who have been found guilty of criminal acts.³⁵ . It has multiple goals, which include retribution, deterrence, rehabilitation, incapacitation, and restoration.³⁶ The capital punishment as the ultimate punishment is raising certain considerations into this framework.

³⁴ Campbell, Christopher M. "It's not technically a crime: Investigating the relationship between technical violations and new crime." *Criminal Justice Policy Review* 27, no. 7 (2016): 643-667.

³⁵ King, Michael. *The framework of criminal justice*. Taylor & Francis, 2023.

³⁶ Demleitner, Nora, Douglas Berman, Marc L. Miller, and Ronald F. Wright. *Sentencing law and policy: Cases, statutes, and guidelines*. Aspen Publishing, 2022.

Objectives of the Capital Punishment

In the context of the sentencing, specific consideration should be given to the aims of capital punishment. The death penalty or capital punishment is the most severe punishment and has its goals and implications.³⁷.

Although retribution is often given as a key goal, the policy is additionally aimed at causing fear to the potential offenders, however, the goal of rehabilitation as a main objective in sentencing cannot work in this case, as execution will make impossible any possibility of personal change. Equally, restoration in the conventional meaning of the term cannot be linked to capital punishment since the process of execution does not involve healing and reconciliation that accompany restorative justice.³⁸.

The character of these conflicting ends implies that a more thorough grasp of the role of capital punishment requires much more involvement with theoretical approaches to punishment.

Punishment Theories and their Use in Capital Punishment

Punishment is one of the basic components of the criminal justice system as it is aimed at correcting wrong and maintaining social order. There have been several theoretical justifications put forward to justify punishment, but each is based on the specific goals and possible consequences. In the context of capital punishment, these theories obtain implications of their own, which should be investigated in detail. Considering each of them mainly through the lens of its initial goals, we

³⁷ Sunstein, Cass R., and Adrian Vermeule. "Is capital punishment morally required? Acts, omissions, and lifelife tradeoffs." In *Deterrence*, pp. 317-364. Routledge, 2019.

³⁸ Kanwar, Vik. "Capital punishment as closure: The limits of a victim-centered jurisprudence." *NYU Rev. L. & Soc. Change* 27 (2001): 215.

attempt to obtain the full picture of the purposes of punishment and the consequences of capital punishment regarding each of the theories.³⁹.

Retribution Theory

Retribution or the philosophy of just deserts views that the punishment should be equivalent to the offense done by crime. In this system, the offenders will be punished in accordance to the magnitude of their crimes. The advocates argue that retribution creates moral harmony, supports social values and fulfills the need of justice⁴⁰. Death penalty goes hand in hand with the concept of retribution where it provides a perceived appropriate answer to atrocious crimes. Proponents argue that the penalty of death, which is the final one, indicates the societal hatred of such acts as well as closure to the victims and their families⁴¹.

The opponents of retribution caution about the risk of punishing in the sole intention of vengeance and the habit of overdoing the punishments. According to them, a retributive focus can give preference to retribution rather than rehabilitation and restorative justice. There is also the concern about wrongful conviction since capital punishment is irreversible and there are no systems to correct a mistake. This means that the ethical consequences of retribution should be considered wisely so that the punishment is relevant and not so cruelly done.⁴².

³⁹ Bohm, Robert M. *Deathquest: An introduction to the theory and practice of capital punishment in the United States*. Routledge, 2016.

⁴⁰ Gerber, Monica M., and Jonathan Jackson. "Retribution as revenge and retribution as just deserts." *Social justice research* 26 (2013): 61-80.

⁴¹ Armour, Marilyn Peterson, and Mark S. Umbreit. "Ultimate penal sanction and closure for survivors of homicide victims." *MArq. J. reV.* 91 (2007): 381.

⁴² Thurschwell, Adam. "Ethical exception: Capital punishment in the figure of sovereignty." *South Atlantic Quarterly* 107, no. 3 (2008): 571-596.

Deterrence Theory

The deterrence theory aims at preventing a crime in the future by instilling fear in the potential criminals. It is based on the assumption that threat of punishment will deter people to commit crimes. In this context, there are two modes of deterrence, that is, general deterrence and specific deterrence, which are generally considered complementary. General deterrence is an attempt to restrain criminal activity in greater people in society by demonstrating to them the consequences that will occur when one transgresses the law whereas specific deterrence is an attempt to restrain the one who committed a crime, with the intention of never committing a crime again.

The proponents of the death penalty argue that the potential death penalty is an effective deterrence tool. The seriousness and the irreversibility of this form of punishment is quoted as powerful deterrents to acts of violence. Critics however think that the empirical data supporting this assertion is not decisive and that socio-economic status, educational opportunities and access to resources have more effect in crime reduction. In addition, the morality of using capital punishment as the deterrent should be critically examined, which requires balancing between the deterrent value and the human life value and the possibility of wrongful convictions⁴³.

Prevention Theory

Incapacitation which is also known as Prevention Theory suggests that the well-being of the society is enhanced by taking away dangerous offenders within the society. It focuses on discouraging additional harm by secluding the dangerous ones. Death penalty aligns with this model because it would permanently take

⁴³ Kolber, Adam J. "Punishment and moral risk." *U. Ill. L. Rev.* (2018): 487.

criminals out of society and thus prevent further mischief. Its proponents argue that the death penalty acts as the last resort of protection, particularly in situations where rehabilitation is considered a failure or in cases where maximum protection of the citizens is of utmost importance⁴⁴.

Opponents of capital punishment in this theory point out the sanctity of human life and the fact that there can be cases of sentencing mistakes. They argue that the life imprisonment without the possibility of parole serves the same purpose of shielding the society without the permanent action of taking away a life. This approach focuses on the protection of human life and questions the necessity of death penalty in incapacitation⁴⁵.

Reformation Theory

Reformation Theory or rehabilitation theory is one of the main theories through which the criminal justice policy and practice can be viewed and it focuses on the transformation and reintegration of an offender. It accepts the fact that many people enter the system as a result of structural factors-poverty, drug addiction, lack of education, lack of job opportunities being the major ones. As a result, rehabilitation programs like counseling, educational development, vocational training, and substance abuse treatment are created not only to face these states but also to equip criminals with skills necessary to lead a lawful life after being released⁴⁶.

There is a particularly tense ethical dilemma in this framework that can be revealed in the context of the death penalty. Since the death penalty is irreversible, any

⁴⁴ Duker, Marius, and Marijke Malsch. "Incapacitation: Trends and new perspectives." In *Incapacitation*, pp. 237-251. Routledge, 2016.

⁴⁵ McLeod, Marah Stith. "The death penalty as incapacitation." *Virginia Law Review* 104, no. 6 (2018): 1123-1198.

⁴⁶ Cullen, Francis T., and Cheryl Lero Jonson. "Rehabilitation and treatment programs." *Crime and public policy* (2011): 293-344.

chance of development of offenders shall be closed forever. Critics affirm that social priorities should be focused on the potential of redemption and the potential of positive change instead of ongoing punishment. Thus, the moral impact of depriving people of a chance to reform themselves should be balanced with the existing considerations of the social safety and the seriousness of the crime⁴⁷.

To conclude, whereas the sentencing process is aimed at the constellation of objectives, such as retribution, deterrence, rehabilitation, and restoration, capital punishment achieves only part of them. It is irreversible and as a result, it makes rehabilitation impossible, a disjunction that more and more faces a justice system that is devoted to reform, redemption, and the protection of human rights.

Conclusion

The death penalty is a rather controversial topic in the field of modern criminal justice. Proponents argue that it serves the most serious crimes by providing retributive justice, preventing future acts of crime, and insuring public safety through irreversible incapacitation, and at the same time giving some level of closure to the families of the victims. As a reasonable and necessary reaction to a heinous injustice, they present the practice as a necessity in order to keep the system in check.

On the other hand, critics argue that the process is highly dangerous as it threatens the wrong conviction and unfair use. The fact that the execution is irreversible is noted, which is not in line with the modern human rights practice, and they offer to replace it with life imprisonment without parole to be a humane and efficient alternative.

⁴⁷ Robinson, Paul H., and John M. Darley. "Intuitions of justice: Implications for criminal law and justice policy." *S. Cal. L. Rev.* 81 (2007): 1.

At the international scale, a minority of states still affirms the penalty of death, as opposed to the seeking of abolition, an ever-growing endorsement of rehabilitation, human dignity, and sound legal protection. The future of capital punishment is thus determined by the on-going bargaining between justice, deterrence, and the changing ethical systems.

CHAPTER 2

CAPITAL PUNISHMENT IN SHARIAH

Introduction to Shariah law

Shariah is an Arabic word which means a clear path to the water source, and it represents the right way to lead a righteous life which is approved by God. Based on the Quran and the Sunnah, it is an ethical, moral and legal system that regulates the whole range of life of Muslims. Rather than concentrating solely on penal codes or civil litigation, Shariah offers an integrated system encompassing ritual observance (*‘ibādāt*), social transactions (*mu‘āmalāt*), family law, criminal jurisprudence, commercial dealings, and governmental organization. Fundamentally, Shariah seeks to secure justice (*‘adl*), safeguard public welfare (*maṣlaḥa*), and protect essential human interests (*ḍarūriyyāt*) such as religion, life, intellect, lineage, and property.

The derivation of shariah is founded on certain sources. These are mostly of primary and secondary sources. The main texts are Qur an, the Sunnah, Ijma, and Qiyas. The secondary sources include istihsan, maslaha, istishab, urf, etc.

Legal rulings (*aḥkām*) in Shariah are generally organized into five hierarchical categories: “*farḍ/wājib* (obligatory), *mandūb* (recommended), *mubāḥ* (permissible), *makrūh* (discouraged), and *ḥarām* (forbidden).” This ethical-legal continuum allows the jurist to express its legal requirements and moral demands.

The debate of Shariah and its compliance with international human-rights is a common theme especially in hudud punishment and death penalty. Reformists

advocate contextual interpretation (ijtihād) and the re-opening of the gates of reasoning so as to align classical jurisprudence with contemporary ethical frameworks.

Islamic criminal law

The Islamic Criminal Law is a body of law that is based on the Quran, the Sunnah and the agreement of Islamic jurisprudence that governs a wide range of wrongs, which may be minor to capital crimes.

Al-Mawardi presents an extensive demonstration of this school of law. His seminal work, *Al-Ahkam al-Sultaniyyah*, examines the classificatory schema of criminal acts, stipulates the corresponding sanctions, delineates the evidentiary standards for conviction, and analyses the state's institutional responsibility for the enforcement of Islamic criminal norms.

"الجرائم محظورات شرعية زجر الله تعالى عنها بحدّ أو تعزير ولها عند التهمة حال استبراء تقتضيه السياسة الدينية ولها عند ثبوتها وصحتها حال استيفاء توجبه الأحكام الشرعية"⁴⁸

"Crimes that are prohibited by Shariah law are subject to punishment or retribution, as mandated by Allah, either through prescribed punishments (hadd) or discretionary punishments (ta'zir). When a crime is accused, the religious policy necessitates a thorough investigation. If the crime is proven and its validity established, it is then subject to the implementation of legal rulings as required by Shariah law."

Academically, the Islamic criminal law is envisaged as a system whose main purposes are to protect the five pillars of Islam, which include faith, life, intellect, property and lineage. Its legal sanctions are supposed to deter vice, protect the society and enable the reformation of the wrongdoers.

⁴⁸ Al-Mawardi, Al-Ahkam al-Sultaniyyah Chapter:19

One of the grandest expositions of these pillars can be found in the writings of Al-Shatbi and he describes the characteristic features of these pillars and the justification of their protection.

"ومجموع الضروريات خمسة وهي حفظ الدين والنفس والنسل والمال والعقل وقد قالوا: إنها مراعاة في كل ملة." ⁴⁹

"And the total necessities are five, which are preserving religion, self, progeny, wealth, and intellect. And they have said: It is considered in every religion."

In the Islamic system of law, criminal laws, including those that provide the death penalty, are formulated to achieve justice and protect communal interests. These laws are based on guiding principles which give the first preference to justice on the one hand and on the other they do give importance to the protection of religion, individuals, family, wealth and intellect.

The most serious crimes are punishable by death penalty and this serves as ultimate deterrence to social disorder. This sanction is however, subject to tight procedural safeguards that are meant to prevent mistreatment or miscarriage of justice

The Islamic jurists and institutions are meticulous in their exegesis and implementation of these provisions in a quest to achieve impartial administration as well as promotion of the religious principle of justice.

Islam emphasized the basic principle that everyone has the right to life. However, this principle, stated in the Quran, needs due process of law. Killing is permissible only when a court of law requires it:

"Do not kill a Soul which Allah has made sacred except through the due process of law."⁵⁰

⁴⁹ AL Muwafqat-Al Shatbi, V-II. P20

⁵⁰ Al-Quran, 17:33

Therefore, this *proviso* empowers the applicability of capital punishment as and when Islamic law decrees.

Objectives of Islamic criminal law

The main aim of Islamic criminal law is to protect al-daruriyyat al-khamsa that is usually referred to as the five necessities of faith, life, intellect, property, and lineage. These are the principles that uphold the Muslim society. The provisions of Quran set up to conserve them are as follows:

1. The conservation of life;
2. The conservation of religion/faith;
3. The protection of own descendants, or family;
4. The conservation of property;
5. The survival of the mind of an individual.

The aims of the Islamic criminal law are thus:

- to safeguard the five major pillars of Islam such as faith, life, intellect, property, and lineage;
- to prevent crime and protect society;
- to rehabilitate criminals;
- to build equity and fairness;
- to promote the common good.

Protecting the Five Essential Elements of Islam

Defending five essential elements of Islam is the foundation of Islamic criminal law. These factors are functioning as rules of normativity which govern the determination of crimes.

1. Faith

The first one, faith, includes the acknowledgment of a single God and the Prophet Muhammad (PBUH) carrying on as his messenger.

2. Life

The second element is life and it means the safeguarding of the life of human beings.

3. Intellect

The third component is the protection of human mind and intellect known as intellect.

4. Property

The fourth one, property, is concerned with the defense of the private property.

5. Lineage

The fifth one, lineage, is the maintenance of family and kinship relations.

Deterrent and Protective Functions

Deterrence and protection are the key goals of the Islamic criminal jurisprudence.

The system uses harsh punishments to deter misconduct and incapacitate the convicted parties so that they are unable to commit the offence they committed.

Rehabilitative Function

Another major issue is rehabilitation. Criminals are encouraged to repent and to restore. They can be forced to undergo counseling or some therapies that will re-socialize them and help them to re-acquire productive civic roles.

Just and Fair

The Islamic criminal law also aims at being just. The sanctions are based on the approach of qiyas, or juristic analogy, and will ensure that all penalties correspond to the seriousness of the crime and avoid inconsistency between social classes.

Public Good

Finally, the Islamic criminal norms seek the public good, which is an element that covers deterrence, protection, rehabilitation, justice, and fairness to the general community.

Other Objectives

In addition to the objectives listed above, Islamic criminal law also seeks to achieve other goals. The foremost of these aims is the maintenance of justice and fairness, the furtherance of the common good, the safeguarding of the rights of the accused persons, and the entrenchment of the rule of law. The Islamic criminal law is thus an elaborate body of law that is based on the Quran, the hadith as well as the agreement of Muslim scholars. Its main functions include to preserve the five cardinal aspects of Islam, prevent crime, and defend society, rehabilitate criminals, deliver justice and equalities, and promote the common good.

Classification of offences in Shariah law

Under the Shariah jurisprudence, the offences can be broadly divided into three categories.

1. Hudud: Crimes defined and exactly proportioned in Quran and the Hadith. The hudud crimes have fixed penalties which include theft, adultery, fornication, false allegation of adultery, apostasy and drinking alcoholic beverages.
2. Qisas: Crimes which attract retaliation or compensation and the penalty is equal to the offence committed. Murder, battery and assault are qisas crimes.
3. Ta zir: Crimes not listed and not penalised throughout the Quran or Hadith; the judge is free to exercise his or her judgement. Gambling, bribery and corruption in the streets are also some of the ta zir offences.

Hudud Offences

These are crimes that are considered to be offenses against God, and they are punishable by fixed punishments that are specified in the Quran. Some examples of hadd crimes include theft, adultery, and false accusation of adultery:

"وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ" ⁵¹

"As for the thief, male or female, cut off their hands as a punishment for what they have earned, a deterrent from Allah. And Allah is Mighty, Wise."

"الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلَيْشَهِدَ عَذَابُهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ" ⁵²

"The woman and the man guilty of adultery – flog each of them with a hundred stripes. Let no pity move you in their case, in a matter prescribed by Allah, if you believe in Allah and the Last Day. And let a party of the believers witness their punishment."

"وَالَّذِينَ يَزْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَٰئِكَ هُمُ الْفَاسِقُونَ" ⁵³

"And those who accuse chaste women and then do not produce four witnesses – lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient."

Qisas offences:

These are crimes that are considered to be offenses against individuals or their families, and they are punishable by retaliation. This means that the victim or their family has the right to demand that the offender be punished in the same way that they were harmed. Qisas offences are considered to be less serious than hudud offences. The punishment for qisas offences is equal to the crime that was committed. Some examples of qisas crimes include murder and assault.⁵⁴

⁵¹ Quran Al-Maidah 5:38

⁵² Quran Al-Noor 24:2

⁵³ Quran Al-Noor 24:4

⁵⁴ Quran Al-Baqarah 2:178, Quran Al-Maidah 5:45

Ta'zir crimes:

These are crimes that are not specifically mentioned in the Quran or Hadith, and they are punishable by discretionary punishments that are determined by the judge but it must be proportionate to the severity of the offence. Some examples of ta'zir crimes include gambling, drinking alcohol, and disobeying the ruler.⁵⁵

Sentencing and Punishment in Shariah law

Punishments outlined in the Shariah law serve as a deterrent, protection to the community and rehabilitation tools to the perpetrators besides being designed in the light of justice and equity. According to the Quran, the hudud crimes have specific, predetermined and non-negotiable punishments, but the qisas crimes have punishments equivalent to the offence. Ta zir offences on the other hand are judicial discretionary as long as the punishment is in proportion to the crime committed.

Punishments

The wide scope of sanctions brought into the Islamic criminal jurisprudence encompassed:

- Capital punishment of heinous crimes, including murder, apostasy and adultery.
- Flogging in cases of hudud, i-e, fornication and false charge of adultery.
- Theft punishment amputation of the hand.
- Exile of the hudud crimes such as apostasy and alcohol consumption.
- Ta zir fines on misconduct such as gambling and bribery.
- Ta-zir incarceration, especially of publicly corrupt people.

In the Shariah law, sentencing and punishment are in line with the committed offence. The criminal jurisprudence of Shariah is based on the principle of

⁵⁵ Quran Al-Nisaa 4:34, Quran Al-Taubah 9:57

retaliation where the punishment should be equal to the crime. There are three categories of crimes: Hudud, Qisas and Tazir.⁵⁶

In the Islamic legal tradition, the offences that are categorized as hudud cannot be the subject of judicial discretion. The qisas principle, on the contrary, mandates that punishment be commensurate with the gravity of the offence, whereas ta'zir crimes fall under the rubric of discretionary sentencing.

Hudud Offences

- Theft: The right hand is amputated as a punishment of theft.
- Adultery: Stoning to death is a penalty of adultery.
- Fornication: The punishment against fornication is the flogging up to forty lashes.
- Malicious prosecution of adultery: The punishment of false accusation of adultery is eighty lashes.
- Apostasy: Apostasy is punishable by death through execution.
- Drinking alcohol: The punishment given to drinking alcohol is flogging with not more than forty lashes.

Qisas Offences

- Murder: Murder carries death penalty.
- Battery: The punishment of the battery is an eye for an eye.
- Assault: Assault is punishable by like action.

Ta'zir Offences

- Gambling: The punishment of gambling could be a fine.
- Bribery: The punishment of bribery can be a fine.

⁵⁶ Wahbah Zuhaili; Al Fiqh-ul-Islami wa Adillatuhu, Vol.7, Pg.212

- Public corruption: The punishment of corruption in the eyes of the public is either a fine or a jail sentence.

Rehabilitation of Offenders

In addition to the principle of punishment, the Shariah law gives a matching priority to the rehabilitation mechanisms. The offenders are thus invited to repent and to pay reparation to compensate on the wrongdoings. It can be through compulsory counselling or even psychotherapeutic action. The general aim of this action is to help criminals find productive places within the society and thus prevent the repetition of their misbehavior.

Remissions and Commutations

In the system of Shariah law, vile deeds attract some punishment which can later be reduced or even nullified. These remissions or commutations are usually done by the ruler or head of state.

Overall, Shariah sentencing is a complex system the main objectives of which are the deterrence, protection of the society, and rehabilitation of the criminal. However, the doctrine also incorporates the mechanisms allowing remission and commutation and thus, attempting to guarantee the rightness and fairness of punitive outcomes. In the end, the penal system of Islamic criminal law is meant to protect the five major foundations of Islam which are faith, life, intellect, property and lineage.

Capital punishment in Shariah law

Capital punishment is a legal penalty that involves the premeditated and deliberate taking of human life as a retribution of a criminal act. According to the Sharia law,

Islam does allow this step. The Quran is the explication of the notion of qisas that is defined as the principle of retaliation as a retribution or recompense. Through qisas the wrongdoer is expected to be punished according to the amount of the crime committed.

For example, if a person murders someone, they shall be punished by death. This is because the Quran says that:

"مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَءِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا" ⁵⁷

"That is why We ordained for the Children of Israel that whoever takes a life—unless as a punishment for murder or mischief in the land—it will be as if they killed all of humanity; and whoever saves a life, it will be as if they saved all of humanity."

This verse teaches that all the members of the ummah are said to be responsible of the welfare of the whole community hence the harm of one is a harm of all. On the other hand, the merits of saving a life are a good act of great value; equivalent to saving the entire humanity. This principle acknowledges the inherent value of each human being, which is the indication that his/her life is of higher value compared to all the resources in the world combined.

However, the Quran also says that:

"يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَنٍ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ فَمَنْ أَعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ" ⁵⁸

"O you who have believed, retaliation is prescribed for you in cases of murder: the freeman for the freeman, the slave for the slave, and the female for the female. But whoever is pardoned by his brother [i.e., the killer] anything, then there should be a suitable follow-up and payment to him [i.e., the deceased's heir or legal representative] with good

⁵⁷ Surah Al-Maidah (5:32)

⁵⁸ Al-Baqarah 2:178

conduct. This is an alleviation from your Lord and a mercy. But whoever transgresses after that will have a painful punishment.”

In this verse, the rule of qisas or retaliation on murder is stated. According to it, the punishment committed in killing must be equivalent to the offense i.e., death of the murderer. But it also makes the family of the victim to be able to forgive the murderer, which means that the murderer would have to pay off blood money to the family. The verse also reiterates that qisas is a mercy of God and that any one who violates this law shall be punished.

The Quran also says that:

” وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ ”⁵⁹

“And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous.”

The verse refers to qisas a doctrine of retaliation in murder and in this verse it is mentioned that the principle is an instrument of protection of life as well as the instrument to promote righteousness.

The text refers to its audience as people of understanding, and this establishes the people who can grasp the logic behind the law. It then concludes that qisas serves to preserve life since the penalty would act as a deterrent to those who are inclined to commit murder as they are aware that the same retaliation would be meted out to them should they murder someone.

The verse then proposes that righteousness is at the same time enhanced by the same doctrine. Revenge helps an individual to respect human life and not to take that away unfairly.

⁵⁹ Al-Baqarah 2:179

This discussion ends with a description of qisas as a mercy of God. The defense that such system gives against wrongful killing is linked to an educative role: it trains people to respect the life of other people.

In addition to the Quran, the tradition of Islam further explains capital punishment in the body of Hadith which make up the sayings and actions of the Prophet Muhammad ﷺ as narrated. One particularly instructive example is the passage recorded in a Hadith:

"عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «اجْتَنِبُوا السَّبْعَ الْمُفْسِدَاتِ قَالُوا: يَا رَسُولَ اللَّهِ وَمَا هُنَّ قَالَ: الشِّرْكُ بِاللَّهِ وَالسِّحْرُ وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَأَكْلُ الرِّبَا وَأَكْلُ مَالِ الْيَتِيمِ وَالنَّوْلي يَوْمَ الزَّحْفِ وَقَذْفُ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ الْغَافِلَاتِ" ⁶⁰

“Narrated by Abu Hurairah, may Allah be pleased with him, the Prophet Muhammad (peace be upon him) said, "Avoid the seven destructive sins." They asked, "O Messenger of Allah, what are they?" He replied, "Associating partners with Allah, practicing sorcery, killing a soul that Allah has forbidden except by right, consuming usury, consuming the property of orphans, fleeing from the battlefield, and slandering chaste, innocent believing women.”

In this case, the expression of the killing of a soul which Allah has forbidden, except in right is the most prominent clue of the prohibition of unjust killing of human beings. As a result, the Hadith can confirm that the death penalty can be implemented only in a case where the strict legal standards necessitate it namely in self-defense or the justice. Accordingly, this Hadith bears witness concerning the Prophet ﷺ resorting to death penalty, only when there was no other way out but using it only in the case of the gravest crimes.

The conditions for application of the death sentence

⁶⁰ Saheh Al-Bukhari Hadith No 2726

Under Islamic law, death penalty is applied under a very elaborate set of conditions and procedural requirements. As much as Sharia allows capital punishment, it is limited to specific conditions and harsh procedural protection.

The conditions for the obligation of retribution (qisas) are as follows:

"فلوجوب القصاص شرائط: بعضها يرجع إلى القاتل وبعضها يرجع إلى المقتول وبعضها يرجع إلى نفس القتل وبعضها يرجع إلى ولي القاتل الخ" ⁶¹

"Some of these conditions are related to the killer, some to the victim, some to the act of killing itself, and some to the guardian of the victim."

Related to the killer

- The killer must be of sound mind;
- The killer must be an adult;
- The act of killing must be intentional and deliberate;
- The killing must be deliberate and intentional, without any doubt of unintentionality;
- Finally, the killer must be a willing participant.

Related to the victim

Victim-centric conditions can be divided into three major groups:

1. Lack of retribution is extended to a case where one is a near relative of the murderer and he slays anyone, whether high or low, including the father, son, grandfather, father of father, father of mother, or the mother of father or mother of mother since the hadith reported by the narrator says:

"لَا يُقَادُ الْوَالِدُ بِوَلَدِهِ وَإِنْ قَتَلَهُ عَمْدًا" ⁶²

"The father is not to be retaliated against for his child." This rule is interpreted to include all family members who are close.

⁶¹ Badai Ul-Sanai, Vol-7:Kitab Al Jinayat

⁶² Sunan Dar-e-Qutni: Hadith No 3277

2. The second condition concerns evidential certainty regarding ownership of the victim (salve).
3. The third condition requires the preservation of human life; that is, the right of sanctity is inviolable, so that a Muslim or a non-Muslim living under Muslim rule (known as a dhimmi) who is not engaged in active combat cannot be killed.

Related to the act of killing itself

In the juridical system of Shari'a, murder itself is a special category. The culpable homicide that attracts capital punishment is that of direct killing. In the event of infliction of death indirectly, however, no retributive action is required since indirect incitement of death cannot be equated with direct killing, the punishment of which is death through direct means. Therefore, where someone excavates a well by the side of the road and one falls into it and is killed, the situation is that the excavation is an indirect cause, and no duty of retribution is incurred.

Related to the guardian of the victim

Another category is related to guardianship status of the deceased. In case of failure to identify the guardian, retribution is put in abeyance. The application of retribution is also a prerequisite to guardianship because only through identity can the conditions of retribution be fulfilled otherwise the application of retribution becomes impossible.

Overall, capital punishment can be applied in Shari'a, notwithstanding the fact that it is subjected to certain restrictions and strict procedural guidelines.

Crimes carrying death penalty in Shariah law

There are multiple crimes that carry the death sentence in Shariah law. These crimes are divided into four categories:

1. *Qatl ul Amd*; Intentional Murder
2. *Zina*; extramarital sex of a married person
3. *Riddah*; Apostasy including blasphemy
4. *Hiraba*; Armed robbery

Three crimes are compiled in *Hadith*.

“Narrated Abdullah ibn Masood (R.A): Allah’s Apostle said: The blood of a Muslim who confess that none has a right to be worshipped but Allah and that I am his Apostle cannot be shed except in three cases: in Qisas for murder, a married person who commits illegal sexual intercourse and the one who reverts from Islam (apostate) and leaves the Muslims.”⁶³

The fourth crime armed robbery is narrated in *Quran*.⁶⁴

Qatl-ulAmd (Intentional murder)

Qatl-ul-Amd is the most serious crime in Shariah law. It is defined as the intentional killing of another person. The punishment for Qatl-ul-Amd is death, unless the victim's family forgives the murderer.

The origin of this sanction is in *Quran*.

“Believers! Just retribution is prescribed for you in cases of killing: a free man for a free man, a slave for a slave, and a female for a female. If something [of his guilt] is remitted to a person by his brother, this shall be pursued with fairness, and restitution to his fellow-man shall be made in a goodly manner. This is alleviation from your Lord, and an act of His grace. He who transgresses thereafter shall face grievous suffering.”⁶⁵

⁶³ Hadith; Sahih Al-Bukhari:6484

⁶⁴ Qur'an: 5, 33

⁶⁵ Qur'an: 2, 178

The Quran specifically exhorts the victim (or their relatives) to extend forgiveness to the perpetrator and to stipulate financial compensation (diyya) instead of seeking retribution through explicit enforcement. Such injunction may be viewed as an aid of the offender or as a sacrifice of the victim itself, for his own sins.

“But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed – then it is those who are the wrongdoers.”⁶⁶

A number of conditions must be met within the Islamic jurisprudence in order to qualify a homicide as Qatl-ul-Amd. To begin with, the killing should be willful and not justified. Moreover, the dead person has to be a Muslim.

In case the relatives of the victim forgive the offender, the punishment gets changed to diya, or blood money-money due to the family of the victim. The court determines the diya and the amount is computed in proportion to the social status and economic position of the victim.

Zina (Extramarital sex of a married person)

Zina (Adultery) is an extramarital sex and is strictly forbidden in Islam. It is a major sin in Islam, and it is punishable by death for married people. The punishment for unmarried people is flogging.

“Omer bin al khattab r.a said: Allah's Messenger awarded the punishment of stoning to death to the married adulterer and adulteress and, after him, we also awarded the punishment of stoning, I am afraid that with the lapse of time, the people may forget it and may say: We do not find the punishment of stoning in the Book of Allah, and thus go astray by abandoning this duty prescribed by Allah. Stoning is a duty laid down in Allah's Book for married men and women who commit

⁶⁶ Qur'an: 5, 45

adultery when proof is established, or if there is pregnancy, or a confession.”⁶⁷

Sexual intercourse is legally classified as “Zina” only when it satisfies the following criteria: 1) it must be consensual; 2) it must take place outside legal marriage; and 3) the participants must be of opposite sexes. In case the participants are engaged in marriage with other people, the punishment is to be a death penalty. In case any of the parties involved is not married, the penalty is one hundred lashes.

Hirabah (Armed of highway robbery)

Hirabah known as armed robbery or highway robbery is a situation in which one applies violence or terror in order to deprive another person of property. The conduct should take place in a publicly-oriented place, and it should be accompanied by an overt threat of physical injury.

In the Islamic legal tradition, Hirabah is a serious crime and punishable by death in case a group of people use arms to commit an armed robbery on the highway and at the same time kill.

Allah say in the Holy Quran:

“Indeed, the penalty for those who wage war against God and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment.”⁶⁸

Riddah (Apostasy)

Riddah or Apostasy is defined as “the act of abandoning Islam and embracing a different religion or belief, or the act of a Muslim who was once a Muslim and has

⁶⁷ Hadith; Sahih Muslim, 4513

⁶⁸ Qur'an: 5, 33

become an atheist”. It is a major sin in Islam, and it is punishable by death for a Muslim who leaves Islam and then commits acts of aggression against Muslims.

The punishment for Riddah is death, even if the person who commits it does not actually do anything to harm Muslims. This is because Riddah is considered to be a threat to the Islamic community. The person committed the offence of apostasy in Islam is put to death after due process of law.

“Narrated by Ikrima r.a: Some Zanadiqa (atheists) were brought to `Ali and he burnt them. The news of this event, reached Ibn `Abbas who said, If I had been in his place, I would not have burnt them, as Allah's Messenger (PBUH) forbade it, saying, 'Do not punish anybody with Allah's punishment (fire).' I would have killed them according to the statement of Allah's Messenger (PBUH), 'Whoever changed his Islamic religion, then kill him.’”⁶⁹

Conclusion

Islamic criminal law is an advanced and complex legal system whose source of law is rooted in the Quran, the hadith and the opinion of Muslim scholars. Its principal objectives are: (1) the protection of the five essential elements of Islam; (2) the deterrence of crime and the safeguarding of society; (3) the rehabilitation of offenders; (4) the establishment of justice and fairness; and (5) the promotion of the public good. In Islamic law, death penalty is considered as a punishment as well as a way of administering justice in society.

One of the core values in the Sharia law is the respect to due process. The Islamic jurists have also spelt out various procedural protections that are to be followed in a case of capital punishment. These are to safeguard the rights of the accused person,

⁶⁹ Hadith; Sahih Bukhari: 6524

ensure procedural fairness and reduce the chances of miscarriage of justice. These are the right to have counsel, the presumption of innocence, the burden of proving the case made by the prosecution, and the bar on the torture or coercion of confessions.

It is important to note that the death penalty is the only punishment that can be administered on such crimes, in some situations, it can be lowered or even be dropped.

CHAPTER 3

CAPITAL PUNISHMENT IN INTERNATIONAL HUMAN RIGHTS

Introduction to “International Human Rights Law”

In the field of “International Human Rights Law”, two of the most significant trends in the final decades of the 20th century were a dramatically increasing number of executions, and an equally dramatic increase in the number of states that were abolitionist. One of the turning points in the process was the successful transition of capital punishment as an issue that was governed purely by the states to the international issue that was firmly placed under the human-rights regime. Death penalty is also wrong according to abolitionist activists because it violates the right to life and the dignity of human beings.

The international law of human rights represents one of the most essential pillars of the international legal order, which is devoted to the promotion and protection of fundamental rights and freedoms of every individual, irrespective of their nationality, race, gender, religion, or any other qualification. It also covers a wide range of rights which include civic and political rights as well as reaching into economic, social and cultural aspects. There are norms which are internationally acceptable and are formulated to compel states to abide by the norms and to promote justice, equality and human dignity at international levels.

Fundamental Principles of “International Human Rights Law”

The “International Human Rights Law” has a group of principles on which it is based and which determines the conceptual structure and practical functioning of this law. The following are the principles:

- 1. Universality:** “Human rights are universal, inherent to all individuals, regardless of their nationality, race, religion, or any other status”⁷⁰. The rights are available to all human beings regardless of legal capacity and cannot be distributed or withheld.
- 2. Inalienability:** “Human rights are inalienable and cannot be taken away or relinquished. They are inherent to human beings by virtue of their humanity and are not subject to conditionalities or revocation”⁷¹.
- 3. Indivisibility:** “Human rights are indivisible and interrelated. Civil and political rights, such as the right to life and freedom of expression, are interconnected with economic, social, and cultural rights, such as the right to education and adequate standard of living. The fulfillment of one right is dependent on the realization of other rights”⁷².
- 4. Non-discrimination:** “Human rights must be enjoyed without any form of discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status”⁷³. Non-discrimination is a fundamental principle that ensures equality and equal protection under the law”⁷⁴.

⁷⁰ Adamu, Awa. "The Universality of Human Rights: Myth or Reality?." *Journal of Intellectual Property and Human Rights* 2, no. 11 (2023).

⁷¹ Porat, Ariel, and Stephen Sugarman. "Limited inalienability rules." *Geo. LJ* 107 (2018): 701.

⁷² Marochini, Maša. "Civil and Political, and Economic and Social Rights–Indivisible or Separable?." *Zbornik Pravnog fakulteta u Zagrebu* 64, no. 2 (2014): 307-332.

⁷³ Adeola, Aderomola. "Article 2–Non-discrimination." In *The Universal Declaration of Human Rights*, pp. 36-55. Brill Nijhoff, 2023.

⁷⁴ Moeckli, Daniel. "Equality and non-discrimination." In *Equality and Non-Discrimination under International Law*, pp. 53-70. Routledge, 2017.

Historical Development of “International Human Rights Law”

“International Human Rights Law” has been developing together with a sequence of world and regional events. The milestones are worth noting and include:

1. Universal Declaration of Human Rights (UDHR): Adopted by the United Nations General Assembly in 1948, the UDHR constitutes a seminal moment in the field’s development by proclaiming the fundamental rights and freedoms to which all individuals are entitled and by establishing the foundation for subsequent instruments⁷⁵.

2. International Covenant on Civil and Political Rights (ICCPR): Adopted in 1966, the ICCPR enshrines civil and political rights, such as the right to life, liberty, and security of person, freedom of expression, and the right to a fair trial. It places a legal state obligation on parties to the state to respect, protect, and ensure these rights without any violation⁷⁶.

3. International Covenant on Economic, Social and Cultural Rights (ICESCR): Also adopted in 1966, the ICESCR recognizes economic, social, and cultural rights, including the right to education, health, and an adequate standard of living. It lays stress on the gradual actualization of these rights⁷⁷.

4. Regional Human Rights Systems: Regional systems (including the European Convention on Human Rights, the Inter-American Court of Human Rights and the

⁷⁵ Mayers, David. "Humanity in 1948: The genocide convention and the universal declaration of human rights." *Diplomacy & Statecraft* 26, no. 3 (2015): 446-472.

⁷⁶ Baldinger, Dana. "The 1966 International Covenant on Civil and Political Rights (iccpr)." In *Vertical Judicial Dialogues in Asylum Cases*, pp. 66-136. Brill Nijhoff, 2015.

⁷⁷ Sital, Kalantry, Jocelyn E. Getgen, and Steven Arrigg Koh. "Enhancing enforcement of economic, social, and cultural rights using indicators: A focus on the right to education in the ICESCR." In *Economic, Social and Cultural Rights*, pp. 211-268. Routledge, 2017.

African Charter on Human and Peoples Rights) have played an important role in developing and enforcing human rights norms in their regions.⁷⁸

Sources of “International Human Rights Law”

“International Human Rights Law” has sources that include:

1. Treaties and Conventions: International treaties and conventions on human rights form the major means of this body of law. Such legally binding agreements delineate both the rights and obligations of state parties, exemplified by the ICCPR, ICESCR, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and Convention on the Rights of the Child (CRC), among others⁷⁹.
2. Customary International Law: Customary international law, which refers to general practices and norms recognized as legally binding by states, includes customary human rights norms, such as the prohibition of torture and genocide, reaffirmed through consistent state practice and an *opinio juris* (the sense of legal obligation)⁸⁰.
3. General Principles of Law: The general principles of law as they are established by civilized nations as well as the principle of non-discrimination and the principle of proportionality are assistive in the development and interpretation of “International Human Rights Law”⁸¹.

⁷⁸ Huneeus, Alexandra, and Mikael Rask Madsen. "Between universalism and regional law and politics: A comparative history of the American, European, and African human rights systems." *International Journal of Constitutional Law* 16, no. 1 (2018): 136-160.

⁷⁹ Besson, Samantha, and Eleonor Kleber. "Article 2: The right to non-discrimination." In *The UN Convention on the Rights of the Child: A commentary*, pp. 41-72. Oxford University Press, 2019.

⁸⁰ d'Amato, Anthony. "The concept of human rights in international law." In *International Law of Human Rights*, pp. 21-70. Routledge, 2017.

⁸¹ Pisillo Mazzeschi, Riccardo, and Alessandra Viviani. "General principles of international law: from rules to values?." *Global justice, human rights and the modernization of international law* (2018): 113-161.

4. Judicial Decisions and Jurisprudence: Decisions of international and regional human rights courts—most prominently the International Court of Justice (ICJ), the European Court of Human Rights (ECHR), and the Inter-American Court of Human Rights (IACHR)—establish precedents and interpretations that shape the understanding and application of “International Human Rights Law”⁸².

5. Resolutions and Declarations: Resolutions and declarations made by international and regional institutions, especially the United Nations General Assembly and the Human Rights Council facilitate the development of international human rights norms and standards⁸³.

Mechanisms of “International Human Rights Law”

The international law on human rights is based on a set of procedures to observe and implement its normative provisions. Such mechanisms are:

a. Treaty Bodies: Treaty bodies, or committees, are predetermined by a certain human rights treaty and they oversee the process of treaty obligations being carried out by state parties. They examine state reports, give recommendations, and interpretations of the provisions of a treaty. Examples of treaty bodies include the Human Rights Committee (HRC) for the ICCPR and the Committee on Economic, Social and Cultural Rights (CESCR) for the ICESCR⁸⁴.

b. Special Procedures: The special procedures are also referred to as mandates, these are individuals who are appointed by the United Nations to deal with particular

⁸² Gavrysh, Khrystyna. "Establishing Judicial Precedents Through Advisory Opinions of the European Court of Human Rights." *The Italian Review of International and Comparative Law* 2, no. 2 (2022): 266-295.

⁸³ Domínguez-Redondo, Elvira. "Chapter Six. Role Of The UN In The Promotion And Protection Of Human Rights." In *An introduction to international human rights law*, pp. 119-144. Brill Nijhoff, 2010.

⁸⁴ Bayefsky, Anne. *The UN human rights treaty system: Universality at the crossroads*. BRILL, 2021.

areas of human rights or themes⁸⁵. They are independent experts, also referred to as Special Rapporteurs or Special Representatives, and they investigate human rights situations, report on such violations and make recommendations on action.

c. Universal Periodic Review (UPR): "The UPR, established by the United Nations Human Rights Council, involves a periodic review of the human rights records of all United Nations member states. It offers a platform to states to present their progress, difficulties and commitments in terms of human rights and other states and civil society are also involved in it"⁸⁶.

d. Regional Human Rights Systems: Regional systems of human rights, like European system, Inter-American system, and African system, have developed their own monitoring and implementation of the human rights standards in their region. These systems have regional courts, commissions and committees which deal with cases and give decisions on human rights violation⁸⁷.

e. International Criminal Court (ICC): "The ICC, established by the Rome Statute, is the first permanent international criminal court with the jurisdiction to prosecute individuals for genocide, war crimes, crimes against humanity, and the crime of aggression. The ICC plays a role in the enforcing of the standards of human rights by bringing individuals to account on acts of serious human rights violations"⁸⁸.

⁸⁵ Piccone, Ted. "The contribution of the UN's special procedures to national level implementation of human rights norms." *The international journal of human rights* 15, no. 2 (2011): 206-231.

⁸⁶ Friedman, Elisabeth Jay, Kathryn Hochstetler, and Ann Marie Clark. *Sovereignty, democracy, and global civil society: State-society relations at UN world conferences*. State University of New York Press, 2012.

⁸⁷ Viljoen, Frans. "Impact in the African and Inter-American Human Rights Systems: a perspective on the possibilities and challenges of cross-regional comparison." *The Inter-American human rights system: Impact beyond compliance* (2019): 303-326.

⁸⁸ Dörmann, Knut. "War crimes under the Rome Statute of the International Criminal Court, with a special focus on the negotiations on the elements of crimes." *Max Planck Yearbook of United Nations Law Online* 7, no. 1 (2003): 341-407.

Universal declaration of Human Rights (UDHR)

After the end of the Second World War, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) on 10 th December, 1948.⁸⁹.

The Article 3 of Universal Declaration of Human Rights states:

“Everyone has the right to life, liberty and security of person.”⁹⁰

In Article 5 of the UDHR, the statement is confirmed:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁹¹

The Universal Declaration of Human Rights (UDHR) is one of the primary documents in the development of human rights as it reflects the common hopes and ideals of the world community. The UDHR was adopted by the United Nations General Assembly on 10 th December, 1948, and represents an undertaking shared by common dignity and rights of all people.

Historical Context:

World War II, marked by genocide, large-scale atrocities, and widespread human-rights abuses, constituted the pivotal impetus for the creation of the United Nations Declaration of Human Rights (UDHR)⁹². The destruction and human misery that followed gave more impetus to the need of a universal binding charter; one which would safeguard human rights without fail⁹³.

Those who drafted the UDHR are a great variety of cultural, legal, and political traditions. The delegations of many states were represented in an international

⁸⁹ Dolinger, Jacob. "The failure of the universal declaration of human rights." *The University of Miami Inter-American Law Review* 47, no. 2 (2016): 164-199.

⁹⁰ Universal Declaration of Human Rights (UDHR), *un.org*

⁹¹ Universal Declaration of Human Rights (UDHR), *un.org*

⁹² Moyn, Samuel. *The last utopia: human rights in history*. Harvard University Press, 2011.

⁹³ Mutua, Makau. "Savages, victims, and saviors: The metaphor of human rights." *Harv. Int'l LJ* 42 (2001): 201.

committee which was chaired by Eleanor Roosevelt and put the combined wisdom of the states to the task of formulating universal principles.⁹⁴

UDHR was developed as a post-conflict resolution period where all parties involved were determined to prevent future crisis and to uplift human rights as a principle of international law⁹⁵. The Holocaust and other mass atrocities of the time emphasized the need to have a comprehensive legal framework that would support human dignity and autonomy⁹⁶.

Content and Principles:

UDHR contains a preamble and thirty substantive articles that together define the rights and freedoms that every person is entitled to. The main focuses of the text are the affirmations of human dignity, equality, non-discrimination and universality.

Major provisions are:

Article 1: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood⁹⁷."

This introductory statement holds that inherent worth and equality are part and parcel of the human condition. Based on this, no individual can lose certain privileges due to his/her origin, situation, or position.⁹⁸

Article 3: "Everyone has the right to life, liberty, and security of person."

⁹⁴ Glendon, Mary Ann. *A world made new: Eleanor Roosevelt and the Universal Declaration of Human Rights*. Random House Trade Paperbacks, 2002.

⁹⁵ McGuinness, Margaret E. "Peace v. justice: The universal declaration of Human Rights and the modern origins of the debate." *Diplomatic History* 35, no. 5 (2011): 749-768.

⁹⁶ Quataert, Jean H. *Advocating dignity: Human rights mobilizations in global politics*. University of Pennsylvania Press, 2011.

⁹⁷ Juaristi, Francisco J. Rivera. "Article 1—Dignity and Equality." In *The Universal Declaration of Human Rights*, pp. 12-35. Brill Nijhoff, 2023.

⁹⁸ Rorty, Richard. "Human rights, rationality, and sentimentality." *Headline Series* 318 (1998): 116.

This is a basic provision of the right to life and at the same time emphasizes the duty to protect people against arbitrary deprivation of life and the duty to protect personal freedoms and security.

Article 5: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment⁹⁹."

Article 5 strongly focuses on the prohibition of torture and inhuman treatment, and it is based on the fact that the human beings are born with dignity, and they should be safeguarded against all acts of corporal or mental torture.

When combined with other provisions in the UDHR, these articles form a detailed set of guidelines on strengthening and enhancing human rights on various aspects of life.

Significance and Impact:

UDHR is quite important as a guiding document on the promotion and protection of human rights. It is also a guide to right and wrong that offers a universally accepted and universal set of values and norms that states, institutions, and individuals can use to seek justice and equality.¹⁰⁰

The UDHR has underpinned the creation of subsequent human rights treaties and conventions, including the "International Covenant on Civil and Political Rights (ICCPR)" and the "International Covenant on Economic, Social and Cultural Rights (ICESCR)."¹⁰¹ It can be seen in regional human rights system, domestic legal

⁹⁹ Sadiqova, Hemide. "Defining threshold between torture and inhuman or degrading treatment." *Baku St. UL Rev.* 1 (2015): 44.

¹⁰⁰ Pettit, Philip. *Just freedom: A moral compass for a complex world*. WW Norton & Company, 2014.

¹⁰¹ Baderin, Mashood A., and Manisuli Ssenyonjo. "Development of International Human Rights Law before and after the UDHR." In *International Human Rights Law*, pp. 19-44. Routledge, 2016.

systems and the practices of civil society organizations, human rights defenders and advocacy groups the world over.

In addition to its legal significance, UDHR has created a global awareness and an attitude of human rights enlightenment to the laymen so that they can assert their rights and challenge their violation.¹⁰² It has been cited in numerous legal processes, social reforms, and justice movements, which makes it an irreplaceable tool of promoting human rights on domestic and worldwide scales.

The United Nations Declaration of Human Rights (UDHR) exerts considerable influence across multiple societal domains, notably education, culture, and public discourse¹⁰³. The UDHR helps in building a culture of human rights and creates the sense of shared responsibility in ensuring their maintenance and promotion through informing curricula, educational programs, and campaigns aimed at raising awareness among the general population.¹⁰⁴

International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) entered into force on 23 March 1976, after its adoption by the United Nations General Assembly on 16 December 1966¹⁰⁵.

Article 7 of the International Covenant on Civil and Political Rights (ICCPR) says:

¹⁰² Blau, Judith R., and Alberto Moncada. *Human rights: Beyond the liberal vision*. Rowman & Littlefield, 2005.

¹⁰³ Mutua, Makau Wa. "The ideology of human rights." In *International Law of Human Rights*, pp. 103-172. Routledge, 2017.

¹⁰⁴ Tibbitts, Felisa, and William R. Fernekes. "Human rights education." *Teaching and studying social issues: Major programs and approaches* (2011): 87-117.

¹⁰⁵ Baderin, Mashood A., and Manisuli Ssenyonjo. "Development of International Human Rights Law before and after the UDHR." In *International Human Rights Law*, pp. 19-44. Routledge, 2016.

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹⁰⁶

Article 6 of the ICCPR states:

- “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.”¹⁰⁷

Historical Background:

The ICCPR constitutes a landmark international human rights instrument intended to safeguard civil and political rights, and it builds upon the Universal Declaration of Human Rights (UDHR) and complements the International Covenant on Economic, Social and Cultural Rights (ICESCR) within the overall framework of the International Bill of Human Rights.¹⁰⁸ The negotiation of the ICCPR, which began in 1954, sought to impose legally binding obligations on states to protect, respect, and fulfill civil and political rights.

The document was written in the context of the post-World War II times, when a sense of unity to stop the occurrence of atrocities in the future, and to ensure that democracy and the rule of law prevailed, was in the air¹⁰⁹.

Content and Key Provisions:

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty composed of a preamble and fifty-three articles that delineate the civil and

¹⁰⁶ International covenant on Civil and Political Rights (ICCPR), *un.org*

¹⁰⁷ International covenant on Civil and Political Rights (ICCPR), *un.org*

¹⁰⁸ Ssenyonjo, Manisuli. "Reflections on state obligations with respect to economic, social and cultural rights in international human rights law." *The International Journal of Human Rights* 15, no. 6 (2011): 969-1012.

¹⁰⁹ Baruchello, Giorgio, and Rachael Lorna Johnstone. "Rights and value: construing the international covenant on economic, social and cultural rights as civil commons." *Studies in Social Justice* 5, no. 1 (2011): 91-125.

political rights to which all individuals are entitled¹¹⁰. It is broad in scope and contains such entitlements as the right to life, the right to freedom of expression, the right to freedom of religion, the right to a fair trial, and the need to ban torture and cruel, inhuman or degrading treatment. There are four main provisions worth paying special attention:

a. Article 2: “Non-Discrimination and Equality before the Law”:

This article outlaws discrimination based on race, gender, religion, or national origin hence right to equal protection under the law and ensuring the rights and enjoying civil and political rights regardless of any distinction¹¹¹.

b. Article 6: “Right to Life”:

Article 6 acknowledges the right to life by virtue and the prohibition of arbitrary deprivation of life. It places a duty on states to safeguard the right to life within their territories and the penalty of death was stipulated as being applied to the most serious of crimes and under the strictest of protection¹¹².

c. Article 7: “Freedom from Torture and Cruel, Inhuman, or Degrading Treatment”:

This article categorically prohibits the use of torture and cruel, inhuman, or degrading treatment or punishment, and it asserts the dignity of the individual and claims that the individual needs to be safeguarded against all forms of physical or mental abuse¹¹³.

d. Article 14: “Right to a Fair Trial”:

¹¹⁰ Olbrycht-Palmer, Mozart. "Second-class citizens: naturalised citizens and the right to stand for election under the International Covenant on Civil and Political Rights." PhD diss., Macquarie University, 2022.

¹¹¹ Shelton, Dinah L. "Prohibited Discrimination in International Law." (2009).

¹¹² Schabas, William A. "International law and abolition of the death penalty." *Wash. & Lee L. Rev.* 55 (1998): 797.

¹¹³ Vorhaus, John. "On Degredation Part Two: Degrading Treatment and Punishment." *Comm. L. World Rev.* 32 (2003): 65.

Article 14 ensures the right to a fair prosecution and hearing before a competent, independent and impartial tribunal and envisages the right to be told of the charges, to be given reasonable time and facilities to prepare a defense and to have legal aid¹¹⁴.

Collectively, these provisions make up a detailed system of civil and political rights protection and promotion.

Significance and Impact:

The International Covenant on Civil and Political Rights (ICCPR) represents a pivotal global instrument for safeguarding and advancing civil and political rights. The fact that it was adopted and ratified by a great number of states indicates its willingness to respect human rights, democratic values, and the rule of law¹¹⁵.

The ICCPR has had a profound impact on the development of the international law on human rights in that it has entrenched mechanisms of accountability and control that are universally binding and institutional in nature. It has also led to building regional human rights regimes, adoption of regional laws, as well as national and international courts of justice jurisprudence¹¹⁶.

The influence of the Convention is not limited to legal regimes, though: it has served as a source of encouragement to advocacy, giving individuals, civil society organisations, and human rights defenders the drive to address violations, create accountability, and seek justice¹¹⁷.

¹¹⁴ LaFrance, Arthur B. "Criminal Defense Systems for the Poor." *Notre Dame Law*. 50 (1974): 41.

¹¹⁵ Elkins, Zachary, Tom Ginsburg, and Beth Simmons. "Getting to rights: Treaty ratification, constitutional convergence, and human rights practice." *Harv. Int'l LJ* 54 (2013): 61.

¹¹⁶ Benvenisti, Eyal, and George W. Downs. "National courts, domestic democracy, and the evolution of international law." *European Journal of International Law* 20, no. 1 (2009): 59-72.

¹¹⁷ Becker, Jo. *Campaigning for justice: human rights advocacy in practice*. Stanford University Press, 2012.

The reporting and monitoring procedures established under ICCPR also provide a well-organized dialogue between the international human rights institutions and the states parties. Article 40 requires state parties to provide periodic reports on the implementation of the Covenant, and the reports allow a thorough assessment of the progress and difficulties¹¹⁸. “The Human Rights Committee” (HRC), established under the Convention, reviews these reports, issues recommendations, and clarifies its provisions through interpretation.

Second optional protocol to ICCPR

Under the international law of human rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) seeks the abolition of the death penalty and the establishment of a world-wide moratorium on executions. On 15 December 1989 the protocol was adopted by the General Assembly and on 11 July 1991 it came into force.

Article 1(2) of the second protocol says:

“Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.”¹¹⁹

Historical Context:

The abolitionist movement is so entrenched in the idea of the dignity and value of each human being. Many international and regional documents already contain protection against the use of the death penalty by highlighting the right to life and the ban on cruel, inhuman or degrading treatment or punishment¹²⁰.

¹¹⁸ Jelić, Ivana, and Linus Mührel. "The Human Rights Committee—Challenges and Prospects for Enhanced Effectiveness and Integration." *Journal of Human Rights Practice* 14, no. 1 (2022): 17-43.

¹¹⁹ Second Optional Protocol to ICCPR, *un.org*

¹²⁰ van Zyl Smit, Dirk. "Punishment and human rights." *The SAGE handbook of punishment and society*. London: Sage (2013): 395-425.

The protocol, accordingly, embodies a growing global agreement about the abolition of the death penalty, with consideration of the fact that such a sentence is irreversible inexorably, and the possibility of wrongful convictions.¹²¹.

Content and Key Provisions:

The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) consists of a preamble followed by six substantive articles, collectively establishing a legal framework aimed at the elimination of capital punishment. Important provisions include the following:

a. Article 1: Abolition of the Death Penalty:

In this provision, the state parties are bound to abolish the death penalty in their territories, therefore, highlighting the right to life and encouraging the states to take necessary steps towards its abolition¹²².

b. Article 2: Suspension of Executions:

This provision is the requirement of moratorium on executions of persons sentenced to death and restriction of the state parties to execute any person sentenced to death. It confirms the sanctity of the right to life and the innate dignity of every human being and cites the fact that death sentence constitutes inhuman treatment¹²³.

c. Article 3: Prohibition of Reservations:

States are prohibited under this article to invoke reservations or to state limitations regarding articles of the protocol and the objectives of the protocol¹²⁴.

d. Article 4: Denunciation:

¹²¹ Alston, Philip, and Ryan Goodman. *International human rights*. American Chemical Society, 2013.

¹²² Markel, Dan. "State, be not proud: A retributivist defense of the commutation of death row and the abolition of the death penalty." *Harv. CR-CLL Rev.* 40 (2005): 407.

¹²³ Addis, Adeno. "Dignity, Integrity, and the Concept of a Person." *ICL journal* 13, no. 4 (2020): 323-372.

¹²⁴ Adjami, Mirna, and Julia Harrington. "The scope and content of article 15 of the universal declaration of human rights." *Refugee Survey Quarterly* 27, no. 3 (2008): 93-109.

This is a provision that allows a state party which has already ratified or acceded to the Second Optional Protocol to denounce it and this is stipulated with the requisite procedures.

The denunciation has a prospective only effect; those already under the jurisdiction of the denouncing state are subject to the protocol and those brought afterwards under its jurisdiction are subject to it¹²⁵.

Significance and Impact:

The Second Optional Protocol to the International Covenant on Civil and Political Rights (hereafter Protocol II) occupies a pivotal position in contemporary international efforts to abolish the death penalty. Its signature and ratification by more and more states means that people are becoming more aware of the value of their inherent dignity and value as well as their need to protect the right to life.

The Protocol II being an instrument of both the law and the morality has made a significant contribution to the world abolitionist movement which has provided a logical structure to counter the capital punishment. The treaty has triggered the reduction of the number of executions across the globe and has provoked the wide discussion by the general population about the negative aspects and dangers of capital punishment.

Also, it has been influential in the national legal systems. States which ratified the Protocol II have taken the steps towards limiting or abolishing death penalty within the country. These policies have influenced the legislation, judicial practice, and opinion, which have enhanced the support of the abolition in the population.

¹²⁵ Sinha, Bhek Pati. *Unilateral denunciation of treaty because of prior violations of obligations by other party*. Springer, 2012.

Not just in the context of the law, but also in terms of the civil society the Protocol II has been a source of momentum in the areas of public discussion, education, and awareness-raising on the human rights aspect of the death penalty. The Protocol II is a strategic tool, which is used by civil society organizations and human rights defenders as well as the abolitionist movements that challenge the continued practice of capital punishment and promote alternatives to punishment based on respect of human rights.

Other covenants of the United Nations

Other conventions on the abolition of the death penalty constitute “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)” adopted in Dec 1984¹²⁶ along with “Optional Protocol to the “Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)” adopted in Dec 2002¹²⁷.

The UN General Assembly passed a resolution in Dec 2007, which highlighted that the death penalty provides an assault on human dignity and requested the world to enact a global moratorium on applying the death penalty with the hope of eliminating death penalty. It was reaffirmed in Dec 2008, Dec 2010, and Dec 2012 by subsequent resolutions.¹²⁸

International Covenant on Economic, Social and Cultural Rights

(ICESCR):

¹²⁶ CAT, *un.org*

¹²⁷ OPCAT, *un.org*

¹²⁸ United Nations moratorium on the death penalty, *un.org*

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the United Nations General Assembly on 16 December 1966, and entered into force on 3 January 1976. It aims at protecting and promoting economic, social and cultural rights.¹²⁹ The right to adequate food, housing, healthcare, education and social security is entrenched in the Covenant by recognizing that every person has the right to an adequate standard of living¹³⁰.

ICESCR places a package of obligations on states parties, including the obligation to endeavour to the maximum of its available resources to achieve economic, social and cultural rights. Also, the Covenant highlights the non-discrimination, participation and international cooperation imperatives concerning the rights¹³¹.

The ICESCR has had a significant impact on national law, policy and programmatic action to realise economic, social and cultural rights¹³². It gives a normative approach to state responsibility and the promotion of fair and sustainable growth¹³³.

Convention on the Elimination of All Forms of Discrimination

Against Women (CEDAW):

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations General Assembly on 18 December

¹²⁹ Pinto, Mónica. "International covenant on economic, social and cultural rights." *United Nations Audiovisual Library of International Law*, disponível em https://legal.un.org/avl/pdf/ha/icescr/icescr_e.pdf, acesso em 11, no. 01 (2022).

¹³⁰ Vierdag, Egbert W. "The legal nature of the rights granted by the international covenant on economic, social and cultural rights." *Netherlands yearbook of international law* 9 (1978): 69-105.

¹³¹ Besson, Samantha. "The Principle of Non-Discrimination in the Convention on the Rights of the Child." *INTERNATIONAL JOURNAL OF CHILDRENS RIGHTS* 13, no. 4 (2005): 433.

¹³² Sital, Kalantry, Jocelyn E. Getgen, and Steven Arrigg Koh. "Enhancing enforcement of economic, social, and cultural rights using indicators: A focus on the right to education in the ICESCR." In *Economic, Social and Cultural Rights*, pp. 211-268. Routledge, 2017.

¹³³ Ssenyonjo, Manisuli. "Reflections on state obligations with respect to economic, social and cultural rights in international human rights law." *The International Journal of Human Rights* 15, no. 6 (2011): 969-1012.

1979 and entered into force on 3 September 1981. It is an international agreement that is focused on the advancement of gender equality and eliminating discrimination of women¹³⁴.

CEDAW explains what it means to discriminate against women and it identifies specific areas where discrimination continues to be prevalent, especially in the political area, education, employment, healthcare and the right to justice. States parties are invited to take the appropriate measures to eliminate discrimination and guarantee full and equal participation of women in the society¹³⁵.

CEDAW has been instrumental in the promotion of gender equality and women rights in the world. It has stirred up the legal reform, policies and programs aimed at addressing gender-based violence, wage gaps and other discrimination. The convention also sets up a committee that has the duty of supervising the implementation of states and providing advice on the best way to support women rights¹³⁶.

Convention on the Rights of the Child (CRC):

The Convention on the Rights of the Child (CRC) was adopted by the United Nations General Assembly on 20 November 1989 and entered into force on 2 September 1990. It is a holistic tool devoted to the rights of children because they need some special protection and care¹³⁷.

¹³⁴ Cole, Wade M. "Government respect for gendered rights: The effect of the Convention on the Elimination of Discrimination Against Women on women's rights outcomes, 1981–2004." *International Studies Quarterly* 57, no. 2 (2013): 233-249.

¹³⁵ Southard, Jo Lynn. "Protection of women's human rights under the Convention on the Elimination of All Forms of Discrimination Against Women." *Pace Int'l L. Rev.* 8 (1996): 1.

¹³⁶ Udu, Eseni Azu, Anoke Uwadiogwu, and Joyce Nenna Eseni. "Evaluating the Enforcement of the Rights of Women under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979: The Nigerian Experience." *Beijing L. Rev.* 14 (2023): 764.

¹³⁷ Todres, Jonathan. "Emerging limitations on the rights of the child: the UN Convention on the Rights of the Child and its early case law." *Colum. Hum. Rts. L. Rev.* 30 (1998): 159.

CRC expresses a broad range of rights of children in civil, political, economic, social and cultural aspects. It highlights their entitlement to live, grow and take part and protects them against violence, exploitation and discrimination at the same time¹³⁸.

At the international scale, the CRC has stimulated the process of advancing children rights through laws and institutional changes, the establishment of child-protection systems, and the growth of inclusive educational and health services. Besides, it forms a monitoring committee that assimilates the situation of the state and provides policy input on how to implement them¹³⁹.

Other Human Rights Treaties:

The United Nations has produced additional human-rights instruments that address specific issues, supplementing the ICESCR, CEDAW, and CRC).¹⁴⁰. They include:

a. "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)":

An instrument adopted by the United Nations General Assembly on 10 December 1984 and entering into force on 26 June 1987, whose explicit mandate is the prevention and eradication of torture and other ill-treatment. States parties pledge themselves to take measures to prevent and investigate and prosecute acts of torture as provided by the treaty¹⁴¹.

¹³⁸ Kilkelly, Ursula. "The convention on the rights of the child after twenty-five years: Challenges of content and implementation." In *Handbook of Children's Rights*, pp. 102-116. Routledge, 2016.

¹³⁹ Kilkelly, Ursula. "The convention on the rights of the child after twenty-five years: Challenges of content and implementation." In *Handbook of Children's Rights*, pp. 102-116. Routledge, 2016.

¹⁴⁰ Heyns, Christof, and Frans Viljoen, eds. *The impact of the United Nations human rights treaties on the domestic level*. Brill, 2021.

¹⁴¹ Magee, Peder van W. "The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: The Bush Administration's StanFeller,

b. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW):

This convention adopted on 18 December 1990 and coming into force on 1 July 2003, this convention concentrates on the protection of migrant workers and their families, acknowledging their contributions to host societies and obliging states parties to safeguard their rights¹⁴².

c. Convention on the Rights of Persons with Disabilities (CRPD):

This convention adopted on 13 December 2006 and entering into force on 3 May 2008, this instrument seeks to promote, protect and ensure the full and equal enjoyment of all human rights by persons with disabilities, emphasising principles of non-discrimination, accessibility and inclusive development and affirming the right of people with disabilities to take part in every aspect of life¹⁴³.

Resolutions of the United Nations

The United Nations (UN) constitutes a pivotal international organization whose mandate encompasses the pursuit of collective solutions to global challenges while fostering collaboration among states¹⁴⁴. The Organization provides a formal means through which member states can tackle issues of common interest through its

Erika. "Asylum, migration and refugee protection: realities, myths and the promise of things to come." *International Journal of Refugee Law* 18, no. 3-4 (2006): 509-536. *ce on Torture.* *Geo. Wash. J. Int'l L. & Econ.* 25 (1991): 807.

¹⁴²

¹⁴³ Lang, Raymond, Maria Kett, Nora Groce, and Jean-Francois Trani. "Implementing the United Nations Convention on the rights of persons with disabilities: Principles, implications, practice and limitations." *Alter* 5, no. 3 (2011): 206-220.

¹⁴⁴ Rasche, Andreas, and Georg Kell, eds. "The United Nations global compact: Achievements, trends and challenges." (2010).

resolutions; this has ranged in issues of peace and security, human rights, development and environmental management¹⁴⁵.

There are different types of UN resolutions, each serving a specific purpose:

a. General Assembly Resolutions:

General assembly resolutions are non-binding decisions or recommendations made by a general assembly that articulates the opinions of member states, set policy directions, and authorized action on a wide range of social, economic, humanitarian, and political matters. These are important tools in enshrining international norms, dialogue, and collective action¹⁴⁶.

b. Security Council Resolutions:

The security council resolutions are binding documents that are created by the 15 members of the council and they are mainly concerned with international peace and security, which is achieved by preventing and resolving conflicts, sanctioning and sending peacekeeping forces. Such measures become legally binding after at least nine members of the Council endorse them, and this requirement entails the agreement of all five permanent members¹⁴⁷.

c. Human Rights Council Resolutions:

As a subsidiary body of the General Assembly, the Human Rights Council develops resolutions that will address human rights abuse, enhance accountability as well as enhancing protection and promotion of human rights at international levels¹⁴⁸.

¹⁴⁵ Golubovic, Dragan. "An enabling framework for citizen participation in public policy: An outline of some of the major issues involved." *Int'l J. Not-for-Profit L.* 12 (2009): 38.

¹⁴⁶ Angel, William A. "General Assembly Resolutions." In *The International Law of Youth Rights*, pp. 1555-1791. Brill Nijhoff, 2015.

¹⁴⁷ Kirgis, Frederic L. "The Security Council's first fifty years." *American Journal of International Law* 89, no. 3 (1995): 506-539.

¹⁴⁸ Ramcharan, Bertrand. *The UN human rights council*. Routledge, 2013.

Examining individual country cases, thematic issues, and arising problems, such tools provide a critical platform through which the international community can address the burning human rights issues. Further, the resolutions serve as binding documents that guide and establish international human rights norms thus helping in the states in the need to comply with the provisions of the respective treaty regimes¹⁴⁹.

Current status of capital punishment in the world

In the past two centuries, capital punishment as an issue of prosecution has been subjected to systematic scrutiny. Such scholars like Cesare Beccaria led the discussion by supporting its abolition. This debate has ended up in the twentieth century being highly politicized leading to various interest groups. Supporters of abolition, the so-called Abolitionists, fight to end the death penalty and those in support of its maintenance, the so-called Retentionists, defend its continued usage. The outcome has been a mixed world map: some jurisdictions have abolished capital punishment and substituted it with other sanctions, some jurisdictions have not abolished it and others have restored it after a stint of abolishing it¹⁵⁰.

Countries Retaining Capital Punishment:

Nowadays, capital punishment still exists in many states. Even though the exact legal frameworks and the methods of execution vary in various jurisdictions, several countries are prominent.

¹⁴⁹ Terlingen, Yvonne. "The Human Rights Council: A New Era in UN Human Rights Work?." *Ethics & International Affairs* 21, no. 2 (2007): 167-178.

¹⁵⁰ Yu, Zhigang, and Charlotte Hu. "The abolitionist and retentionist debate." In *The death penalty in China: Policy, practice, and reform*, pp. 156-186. Columbia University Press, 2015.

a. United States:

America has a federalistic system where the individual states are given the right to decide whether to use capital punishment or not. By 2022, over fifty-percent of the states have eliminated the sanction, but some states are determined to keep it; lethal injection represents the most common procedure¹⁵¹.

b. China:

China executes the largest number of criminals compared to any other State but official figures are ranked as a state secret. Ways are through lethal injection, firing squad and lethal gas, and acts like murder, drug related crimes and corruption make individuals eligible to death penalties¹⁵².

c. Iran:

The execution rate in Iran is extremely high. Punishment is carried out by the means of hanging or stoning and crimes such as murder, drug trafficking, and some religious crimes are punishable by death¹⁵³.

d. Saudi Arabia:

Saudi Arabia is remarkable in its extremely high rate of executions with beheading by sword as the dominant form of execution. Murder, drug crimes, apostasy and blasphemy have the possibility of capital sentence.

¹⁵¹ Denno, Deborah W. "When Legislatures Delegate Death: The Troubling Paradox Behind State Uses of Electrocution and Lethal Injection and What It Says about Us." *Ohio St. LJ* 63 (2002): 63.

¹⁵² Miethe, Terance D., and Hong Lu. *Punishment: A comparative historical perspective*. Cambridge University Press, 2005.

¹⁵³ Saputro, Muhammad Eko, Andhika Febriansyah, and Faradisya Diandra Putri. "A Discourse of Capital Punishment in the Islamic Law and Human Rights Law." *Contemporary Issues on Interfaith Law and Society* 2, no. 1 (2023): 35-70.

e. Iraq:

Iraq maintains an extremely high execution rate; this is perpetrated mainly by hanging. Crimes that the death penalty can be used are terrorism, murder, and drug crimes.

It should be noted that the process of institutionalization and use of capital punishment is not stagnant and legal systems and variations in procedure evolve with time.

f. Pakistan

Capital punishment is still enforced in Pakistan both as a civilian law and military court. The major crimes that are punished by death penalty include murder, terrorism, rape, blasphemy and drug trafficking; the major mode of execution is by hanging. The human-rights organizations criticize the capital regime of Pakistan because of the issues of fair-trial standards, military courts, and a long list of capital crimes.

Trends towards Abolition:

There has been an international trend in the abolition of capital punishment in the recent years. The driving interests behind this movement are a cluster of interests such as the protection of human rights, the fact that there is a documented risk of wrongful conviction, the changing societal values as well as the growing awareness of the ineffectiveness of death penalty as a deterrent.

a. Europe:

In the Council of Europe, death penalty is abolished in practice among the 47 member states. Furthermore, the European Union (EU) has established abolition as

a prerequisite for EU membership. The most recent execution in the European continent was done in Belarus in 2019.

b. America:

There has been a major transition towards abolition in North and South America. Most states in both jurisdictions have either replaced capital punishment with the law or its practice. The United States is still an exception and there are still jurisdictions where capital punishment is authorised¹⁵⁴.

c. Africa:

Africa has recorded progress. There have been some countries in recent years which have abolished capital punishment and over two-thirds of the countries in Africa have now abolished it either by law or in practice¹⁵⁵.

d. Asia-Pacific:

This area is characterized with a heterogeneous landscape. Although there are states like New Zealand or Australia that have already eliminated capital punishment, there are those that still use it¹⁵⁶.

International Efforts towards Abolition:

Human-rights-based organisations and the United Nations in particular have put vast efforts to the global abolition of the death penalty. These efforts are undertaken in many forms:

¹⁵⁴ Girelli, Giada. "The death penalty for drug offences: Global overview 2018." (2019).

¹⁵⁵ AKINGBEHIN, EMMANUEL OLUGBENGA. "Capital Punishment in Nigeria a Critical Appraisal." PhD diss., 2012.

¹⁵⁶ Gontowska, Luiza Maria. "Human Rights Violations Under the Sharia'a: A Comparative Study of the Kingdom of Saudi Arabia and the Islamic Republic of Iran." (2005).

a. Moratoriums and Suspension:

The nations still using the death penalty are encouraged to institute moratoriums or stop the practice. These temporary steps allow to study the effectiveness, justice and adherence to the established norms of the death penalty¹⁵⁷.

b. Advocacy and Awareness:

Human-rights organisations and activists make use of advocacy and public-awareness campaigns to highlight the inadequacies and possible evils of capital punishment through which they have developed an international discourse that can help to rouse a popular campaign against the practice¹⁵⁸.

c. Legal Reforms:

Efforts are aimed at ensuring capital-punishment decisions are based on fair trials, better legal representation, and challenge of systemic biases that may underlie capital-punishment decisions¹⁵⁹.

d. International Instruments and Treaties:

Several instruments like the Second Optional Protocol to the International Covenant on Civil and Political Rights offer a normative framework that allows states to seek the abolition. Supervision is done by the United Nations Human Rights Council, and regional human-rights institutions overseeing progress and advocating abolition¹⁶⁰.

¹⁵⁷ Buchanan, Allen. *Human rights, legitimacy, and the use of force*. Oxford University Press, 2010.

¹⁵⁸ Aulenbacher, Brigitte, and Klaus Dörre. "GLOBAL DIALOGUE MAGAZINE."

¹⁵⁹ Kovera, Margaret Bull. "Racial disparities in the criminal justice system: Prevalence, causes, and a search for solutions." *Journal of Social Issues* 75, no. 4 (2019): 1139-1164.

¹⁶⁰ Storey, Alice. "An Assessment of the Effectiveness of the UN Universal Periodic Review: Towards the Abolition of the Death Penalty in the United States of America." PhD diss., Birmingham City University, 2018.

Conclusion

Capital punishment has remained a subject of practice in varied forms in the international arena: there are those that still practice the sentence, and those that have gone ahead to abolish it. The trend is promoted by a growing worldwide movement based on human rights, the high rate of miscarriages of justice and the changing values of society. The abolitionists raise the issue of human dignity and argue that rehabilitation and restorative justice-based alternatives to crime are more realistic solutions to it.

International law protocols, especially the Second Optional Protocol to the ICCPR and human rights agencies play key roles in the advancement of abolition through advocacy, legal change and sensitization efforts. However, the death penalty is still upheld by many states driven by the ideas of deterrence, retribution, cultural issues, and popular opinion, which again highlights the unresolved dilemma of the global debate on death penalty.

CHAPTER 4

COMPARATIVE ANALYSIS OF INTERNATIONAL HUMAN RIGHTS AND SHARIAH

The death penalty, also traditionally referred to as capital punishment, is a complex legal and moral topic, which raises the question of review of human rights and the regulatory frameworks within which it is implemented. The current comparative inquiry examines the views on capital punishment in terms of the International Human Rights Law and Shariah. By an analysis of the fundamental principles, supporting reasons and surrounding considerations the discussion gives an insight into the convergences, divergences, and the continuing debates on the subject of capital punishment in these legal traditions.

Capital Punishment in “International Human Rights Law”

The legal system whose basis is the so-called International Human Rights Law is constructed with the direct and specific aim of protecting and promoting human rights. The Universal Declaration of Human Rights (UDHR) and subsequent human-rights covenants delineate the right to life as an inviolable and universal entitlement. At the same time a movement to abolish capital punishment has picked up around the world¹⁶¹.

¹⁶¹ Brown, Gordon. *The Universal Declaration of Human Rights in the 21st century: A living document in a changing world*. Open Book Publishers, 2016.

a. Right to Life and Human Dignity:

The UDHR articulates a universal right to life in Article 3 and the International Covenant on Civil and Political Rights (ICCPR) elaborates it further. Those who are in support of abolition argue that capital punishment is a denial of this right thus undermining the dignity of every person¹⁶².

b. Cruel, Inhuman, or Degrading Treatment:

The International Human Rights Law forbids torture or inhuman, cruel or degrading treatment or punishment. Opponents argue that the death penalty, especially death penalty by hanging or stoning may subject a person to this treatment hence violating these absolute proscriptions¹⁶³.

c. Right to a Fair Trial:

The issue of fair trial comes in when the capital punishment is considered. The area of procedural justice is focussed on in an International Human Rights Law. The fair administration of capital punishment is jeopardized by systemic shortcomings, ineffective attorney representation, and the chance of an erroneous conviction¹⁶⁴.

Capital Punishment in Shariah

The Islamic legal system Shariah based on the Quran and the influence of the prophet Muhammad defines normative principles in the conduct of affairs in the legal and moral domains. In this context, the death penalty is tolerated as a punishment on certain crimes, but the concept of its practice fluctuates in the various interpretation, and legal systems of the Muslim-majority countries.

¹⁶² Finegan, Tom. "The Right to Life in International Human Rights Law." *The Heritage Foundation* 24 (2020).

¹⁶³ Weissbrodt, David, and Cheryl Heilman. "Defining torture and cruel, inhuman, and degrading treatment." *Law & Ineq.* 29 (2011): 343.

¹⁶⁴ Mole, Nuala, and Catharina Harby. "The right to a fair trial." *Guide for the application of Article 6* (2006).

a. Quranic and Hadith Justifications:

Shariah is a unique religious-legal order. The theological foundations on which it is based in its doctrine of capital punishment lie in the concepts of accountability, justice of an eye, and principle of hadd.

b. Restorative Justice:

Capital punishment in Shariah is a process used to reach justice and maintain order in the society. It serves as a preventative means against violent crimes, trying to protect individual rights and the community good. In this context, principles of restorative justice are salient, where punishment is perceived as a way of restoring the balance in the society.

c. Procedural Safeguards:

The rules of Shariah enshrine specific pro-cedure-al protection in the capital cases to promote equality. These are admission of plausible evidence, testimony of more than one witness and providing the accused person with a chance to raise a defense. However, there is a tendency to have issues concerning the uniformity of such protections as well as the uniformity of their application in different jurisdictions.

Comparing “International Human Rights Law” and Shariah

Perspectives

In a comparative analysis of International Human Rights Law with Shariah Perspectives, a number of convergences and divergences are obtained.

a. Right to Life and Human Dignity:

Both legislative systems support the value and dignity of each person. However, their attitude to the right to life differs. The International Human Rights Law places the existence of life as a primary value and puts it in the demand of abolishment of

death penalty¹⁶⁵. Shariah, on the contrary, supports the capital punishment as the means of justice, whereas the wider defence and maintenance of life is covered by the broader teachings of Islam.

b. Prohibition of Cruel, Inhuman, or Degrading Treatment:

Both International Human Rights Law and Shariah make it clear that cruel, inhuman, or degrading treatment or punishment is forbidden. But what constitutes the lines of being cruel or inhuman is defined variously. Issues of whether different means of execution should be used and how capital punishment should be applied continue to make debates.

c. Fair Trial Safeguards:

The two systems agree on the issue of significant emphasis on the protections of fair trial in capital cases. Other critical elements are due process, attorney representation, and intense evaluation of evidence. However, implementation of these measures is difficult to ensure in practice.

Contemporary Challenges and Debates:

a. Human Rights Concerns:

Opponents argue that the death penalty is against the right to life and the ban on cruel, inhuman or degrading punishment¹⁶⁶. They focus on the possibility of false conviction, the over-representation of marginalized populations, and the possibility of random or biased enforcement.

¹⁶⁵ Bae, Sangmin. *When the state no longer kills: International human rights norms and abolition of capital punishment*. SUNY Press, 2008.

¹⁶⁶ Tambua, Ceaser. "Death penalty and the right to life: a critical analysis." (2011).

b. Interpretation and Application:

The definition and use of capital punishment under Shariah depends on the system of law and on the culture in different jurisdictions. This variety introduces controversies on the uniformity, equity and universality of its use.

c. Evolving Perspectives:

Both International Human Rights Law and Shariah have undergone changing views in regard to death penalty. Some say that the alteration in the society, the development of the criminal justice system and the popularization of the ideas of restorative justice should result in the reconsideration of the capital punishment application.

To sumup, the analysis of the readings on International Human Rights Law and the understanding of capital punishment in Shariah shows the various issues, reasons, and arguments of this practice. Although it is true that the International Human Rights Law is trying to bring more and more attention to the right to life and the impossibility of the death penalty¹⁶⁷. Shariah is not ignoring the capital punishment as a way to reach justice in its system. The difficulties are related to fair trials, the protection of human dignity and the issues of the threat of false conviction and the ban of cruel, inhuman, or degrading treatment.

Introduction; Abolitionists vs Retentionists

Death penalty has been a practice in civilizations over the centuries. Cesare Beccaria (1738–1794) was the first to systematically criticize torture and the death

¹⁶⁷ Mathias, Matthew D. "The sacralization of the individual: Human rights and the abolition of the death penalty." *American Journal of Sociology* 118, no. 5 (2013): 1246-1283.

penalty, arguing against the state's right to take a life. The abolitionist activism further developed based on the critique proposed by Beccaria and during the eighteenth century and the nineteenth century, a movement of global abolitionists emerged¹⁶⁸. By the twentieth century, capital punishment has become one of the burning political questions all over the world.

Currently, there are two prevailing views in this argument the abolitionist view that demands that capital punishment be abolished altogether and retentionist view which justifies its use as an acceptable punishment to some serious crimes¹⁶⁹.

The current discussion considers these main arguments, theoretical grounds, and policy implications of both abolitionist and retentionist strategies, especially concerning their justifications, the philosophical belief structure, and its general implications on the criminal justice system and the society in general.

Abolitionists

Abolitionists oppose capital punishment on both moral and legal basis and human-rights basis. Essentially, they believe in the policy that every human had an intrinsic dignity and an inalienable right to life, which is infringed whenever the state executes a person. They also highlight the risk of wrongful convictions and other miscarriages of justice with reference to those cases where people proved their innocence later. Moreover, the means of execution- lethal injection, electrocution, etc. are also criticized by the abolitionists because they are inhuman and, in many cases, cause unnecessary suffering, which violates the international norms of human rights.

¹⁶⁸ Franklin E. Zimring; The contradiction of American capital punishment

¹⁶⁹ Salam, Abdul Jalil, and Zahlul Pasha Karim. "Death Penalty in Indonesia: Revisiting the Debate Between the Retentionist and the Abolitionist." *Lentera Hukum* 8 (2021): 115.

Abolitionists have further argued that the death penalty is often applied in a haphazard and biased way, discriminating against people on the social fringe, such as the poor and the racial minorities. These structural inequalities, and the issues of equity and fairness, and the fact that once death occurs it cannot be reversed, lead them to urge the full abolition of the capital punishment.

Retentionists

Retentionist scholarship continues to support the retention of capital punishment on the basis that it serves the necessary criminal justice functions, primarily retribution, deterrence and by extension, protection of the community. It is claimed that capital punishment is a positive reaction to the worst forms of crimes, especially murder, which is also a representation of moral reproach to the crime by the society. Death penalty in this paradigm becomes a right and righteous effect of heinous behavior, which further advances the beliefs of moral responsibility and retributive justice.

Another point is that capital punishment acts as a strong deterrent as it causes potential criminals not to commit a violent act. The retentionist approach emphasizes the role of ceremony and visible spectacle in the strengthening of social norms and the provision of closure to the families of the victim with a final rendering of justice. The precedence of history and the desires of majority as the legitimization of capital punishment is also mentioned as a necessity of the legal systems. In this perspective, the abolition would not only be incompatible with the fixed social values but also ruin the social stability and cultural continuity.

The scholarship reviewed in this thesis defines the main arguments within the context of capital punishment in a way that is similar to scholarly discussion. It examines the rationale, ethical and empirical grounds of each side, providing a

critical assessment of the benefits and shortcomings of both sides of the debate: the abolitionist and the retentionist.

Arguments of abolitionists and their rationale

The abolitionists who aim at the full abolition of capital punishment express a full package of arguments based on ethics, human rights, and practical reasons. Their stand rocks the very validity of death penalty as a state-authorized punishment and the inherent value of all human lives. Among the prominent points which have been made by the abolitionists the following are among them:

Against the right to life

Abolitionists argue that capital punishment is against the first right to life and thus undermines the dignity that is innate to every human being. They argue that no power should be given to anybody to take away the life of a human being regardless of the severity of the crime. This argument is founded on the belief that there is sanctity of life and that all humans are worthy. The abolitionist perspective is consistent with Articles 3 and 6 of the Universal Declaration of Human Rights, and Articles 6(1) and 6(2) of the International Covenant on Civil and Political Rights, both of which categorize capital punishment as inhuman and abusive to human dignity.^{170,171}

The argument deals with the effects of capital punishment on human dignity. Abolitionists claim that the capital punishment administered by the state undermines the dignity of an individual because it considers human beings as replaceable and denies one the possibility of redemption or rehabilitation. Such a

¹⁷⁰ UDHR; *un.org*

¹⁷¹ ICCPR; *un.org*

perspective highlights the necessity to protect life even under the most extreme cases of crime.

Immoral

Critical views against capital punishment argue that certain methods of executing death sentences amount to cruel, inhuman or degrading treatment hence violating international human-rights standards. The death penalty is a uniquely harsh punishment--unusual in its ability to cause severe physical pain, irrevocable and unmatched in its enormity. It completely disavows the inherent dignity of people by opting to sentence them to the same sentences that are generally used on non-humans, making the practice unacceptable.¹⁷²

Some of the procedures that have been targeted by the abolitionist scholars are lethal injection, hanging, electrocution, and firing squad, which have been implicated in long-term agony or botched procedures. They base their criticism on the philosophy that the purpose of punishment should never reach torture or degradation; the forms of punishment, which expose the defendants to unnecessary suffering, cannot be reasonably interpreted as consistent with the underlying principles of human rights. They therefore support punishment which is based on the principle of proportionality, humane treatment and respect to the inherent value of a person.

Irreversible

Among the main arguments that were put forward by the abolitionists there is the danger of miscarriages of justice and the fact that the death penalty is irreversible. The chance of sentencing innocent people to death is not a hypothetical possibility, but instead it has happened on many occasions. Execution is irreversible and thus a

¹⁷² William J. Brennan, Justice of the US Supreme Court Dissenting opinion in *Gregg v. Georgia* (347 KB) July 2, 1976

capital sentence once executed cannot be redressed in the event that the original sentence turns out to be faulty.

The proponents of the abolition of the criminal justice system argue that it is also an erroneous human institution as there were documented instances of exoneration due to the identification of new evidence, DNA, or the revelation of any weak links in the field of forensics. These illustrations indicate that capital sentencing has resulted in the conviction of so many innocent defendants. In the United States, 87 death row inmates are released after being found innocent of the crime after the modern death penalty was restored. This figure here equates to about one innocent person being released out of every seven that are executed.

This argument has its ground in the fact that no one can set up a judicial system that is infallible and that it is expected to make irreversible errors. The death sentence is immutable and therefore such mistakes cannot be rectified. Abolitionists, therefore, argue that the unavailability of judicial error has to warrant the end of capital punishment to avoid the unjust execution of innocent persons.

Arbitrariness and Discrimination

One of the main criticisms of the death penalty stems out of its random nature and the imbalanced impact that it has on marginal income groups. Practically, death penalty is not applied to the most serious offenders; instead, it picks a random pool through irrational factors like the quality of defense attorney, the venue where the crime is committed, the racial background of the offender, or the victim.¹⁷³

¹⁷³ Helen Prejean, MA, Anti-death penalty activist and author of *Dead Man Walking* "Would Jesus Pull the Switch?," *Salt of the Earth* 1997

The critics argue that capital punishment has been distorted by such factors as race, socioeconomic status, and poor legal representation, thus creating inequalities and unequal treatment in the criminal justice system.

This viewpoint is based on the idea of fairness and on the fact that justice has to be blind and impartial. Abolitionists state that the random use of capital punishment undermines the trust of people in justice and emphasizes the biases and discrimination of the system. They, therefore, propose the abolishment of the death penalty in order to obtain the equal treatment in the law, as well as to redress the institutional injustices.

Ineffectiveness as a Deterrent:

Abolitionists claim that death penalty is ineffective to prevent crime. There is no empirical support of high levels of deterrence by capital punishment. The research results show that the expectation of an execution is less important than socioeconomic status, education level, and the likelihood of capture as the determinants of what motivates people to commit a crime.

This conclusion is hinged on the fact that criminal behavior is the result of a complicated combination of social, economic and psychological factors. Capital punishment is not an effective way of dealing with the causes of crimes, or the social backgrounds within which the crimes arise since it is irreversible. On that note, abolitionists demand other forms of sanction, which focus on rehabilitation, prevention, and attempts to deal with the root causes of criminal behavior.

Costly and Expensive

Capital punishment is relatively ineffective because of the fiscal implications of executing the death penalty. Its application requires vastly more expenditure as compared to judicial responses which are based on lesser sanctions. Every aspect

of a death-sentence case increases the demands of a run-of-the-mill case: extended pre-trial investigation, the keeping of a larger group of expert witnesses, doubling of the normal number of counsel, a separate trial, not merely on the issue of guilt, but of punishment, and, inevitably, an appeal period, with the defendants still on death row.¹⁷⁴

Analysis of the arguments of the abolitionists

The arguments by the abolitionists on the capital punishment are based on ethical, human-rights and pragmatic aspects. They emphasize the natural worth and dignity of each person, a danger of mistaken conviction and a ban on inhuman and degrading treatment. These arguments hide serious ethical, human-rights and practical concerns.

These arguments should thus be critically analyzed. Looking at their justifications, we are better placed to understand the complexities and nuances in the argument on whether the death penalty should be used.

Right to Life and Human Dignity

The first point that is advanced by the abolitionists is the fact that death penalty is against the law of life and it also demeans the dignity of all people. This is based on the sanctity of life and the belief that all human beings have intrinsic values.

The advantage of this argument is that it appeals to the universal moral values and that the state must not have the right to decide who lives and who dies. It poses some basic questions concerning the role of the state in carrying out punishment and the restrictions set by the principles of human rights.

¹⁷⁴ Richard C. Dieter, MS, Executive Director of the Death Penalty Information Center Testimony to the Judiciary Committee of the Colorado State House of Representatives regarding "House Bill 1094 - Costs of the Death Penalty and Related Issues", Feb. 7, 2007

Opponents, however, say that the right to life is not an absolute right and that there exist some situations like the cases of extreme violence or terrorism that justify the application of capital punishment as a tool of justice. They argue that the seriousness of these crimes requires a punishment that is commensurate to the gravity of the crimes and this includes the ultimate punishment, which is death.

Prevention of Wrongful Executions

The academic debate concerning the wrongful executions has placed relevance on two intertwined issues namely, the possibility of erroneous convictions as well as the irreversibility of the death penalty. The criminal justice system, according to the abolitionists, is prone to error and therefore there is likelihood that innocent individuals may be sentenced to death, a situation that presents a sharp moral dilemma and questionability of the legal systems.

This criticism gains further credence with the reported occurrence of wrongful convictions especially those revealed by new scientific findings or techniques in forensic investigations. Since the application of capital punishment is irreversible, such discoveries highlight the need to have stringent and fair procedural safeguards to reduce the risk of the wrongful application.

On the other hand, the advocates of capital punishment argue that the modern changes in technology and improved laws have reduced the likelihood of wrongful convictions. They assume that, when the optimal procedural aspects are in place, such as appeals and consideration of new evidence, the likelihood of executing an innocent person is provable lower.

Cruel, Inhuman, or Degrading Treatment

Abolitionist position holds that some methods of execution, especially lethal injection, hanging and electrocution amount to cruel, inhuman or degrading

treatment which violates international human-rights standards. Basing on this stand, such process might prolong the suffering of the prisoner or end with botched executions, which interferes with the basic human dignity concept.

This leads to the fact that the discussion is characterized by some sharp ethical contradiction, since painful and long deaths raise the question of the morality of the killing carried out by the state. To the majority of the observers, this kind of arguments strike a chord with the greater humanitarian appeal to treat in a humane way, irrespective of the guilt or innocence of the offender.

On the other hand, the arguments by the opponents of the capital punishment are that they should work on improving the capital punishment, but not on abolishing it. They argue that pain and suffering may be minimized by technological and procedural innovations, thus making executions compatible with the basic human-rights standards.

Ineffectiveness as a Deterrent

The criminology literature records that the death penalty has failed to act as deterrent to murder. Empirical studies fail to show that the rate of homicides in death penalty retention and abolition jurisdictions are significantly different and also fail to reflect that death penalty has a greater deterrence effect as compared to socioeconomic status, educational level and the likelihood of being caught.

This is because the evidence used to support the argument is systematically researched on deterrence studies and its methodological soundness. These studies show that the prospective of death penalty is not enough to make the offenders stay away; instead, factors like socio-economic deprivation and the promise of arrest and prosecution hold more power in crime prevention.

Those in opposition reply that the empirical evidence in the field of deterrence is still inconclusive and that the potential of capital condemnation continues to hold a deterrent effect. They assume that there is a likelihood that probability of a sure loss of life can serve as a great deterrent, especially when it comes to premeditated or well-thought-out crimes.

Arbitrariness and Discrimination

Two intellectual arguments used by abolitionists against the death penalty, however, are worth highlighting: the randomness with which it is exercised and the overrepresentation it has on disadvantaged groups. The former has to do with the disparity in the administration of punishment in similar cases; the latter illustrates the tendency of race, socioeconomic status, and unfair legal representation to influence sentencing outcomes, thus creating inequality within the criminal justice system. These concerns put systemic biases into focus and emphasize the need of procedural fairness.

The critics counter with the argument that actions that are intended to alleviate such biases and facilitate fair results can ultimately alleviate arbitrary application and discrimination effects. They argue that the most practical solution to guaranteeing the safety of the people and, at the same time, guaranteeing fairness is the systematic reform rather than the complete abolition of capital punishment.

Costly and Expensive

Another practical criticism, promoted by the abolitionists, is the financial cost of carrying out the death penalty to convicted criminals. Capital trials are lengthy, post-conviction appeals are lengthy, and the buildings necessary to accommodate the death row inmates are costly. Empirical research supports the fact that capital

punishment is, on average much more costly than life imprisonment, which echoes with those policy makers who aim at allocating resources.

The defenders of the argument respond that justice is not a financial aspect and that the expense should not be the rationale to fail to implement proper punishment against the worst offences. In fact, they propose that the costly procedural safeguards, which the opponents argue, makes the process too expensive, can be reduced without abolishing capital punishment.

Arguments of retentionists and their rationale

Proponents of retentionist support the further use of capital punishment. Their reasoning will be based on the ideas of justice, deterring, safety of the population, providing closure to the families of the victims, and safeguarding the traditions of culture and laws. A critical analysis of these justifications throws light on these strengths and weaknesses. Among such arguments are:

Deterrence

Retentionists argue that death penalty is a strong deterrent of crime. According to them, the threat to receive the ultimate penalty serves as a barrier to potential criminals who think twice before committing horrible crimes thus leading to safety and security in society.

The argument justification is based on the fact that capital punishment produces an effective deterrence effect. The followers argue that the risk of losing life makes people avoid intended or planned criminal actions. The death penalty is supposed to deter murder, according to empirical studies, with a bit of intuitive logic thrown

in. The fear of death pushes people so much as compared to any other sanction and therefore nothing will discourage a criminal more than the fear of death.¹⁷⁵

Retribution

Among the main claims developed by retentionists, one may single out that the death penalty is a proper reaction to the worst crimes. They assert that capital punishment as a proportional punishment is in harmony with the principle of retribution and proportionality.

Retentionists uphold the motto that one should be punished according to his crime and argue that execution is a proper reaction to the crime of heinous violence or terrorism or other morally despicable behavior. Society states very strongly that it is outraged by these crimes and maintains the principle that every individual deserves what he or she gets by punishing them. Crime is the interruption of an otherwise just order; the restoration of this order through punishment by requiring the wrongdoer to pay an equivalent price of the harm done to others achieves retributive justice.¹⁷⁶

The logical foundation of this outlook is the need that justice should be carried out based on the severity of the crime. Retentionists believe that the death penalty is used to serve this purpose by providing an offender with a punishment proportional to his or her deeds.

Public Safety and Incapacitation:

Retentionists also claim that capital punishment protects the society by getting rid of dangerous people forever. Capital punishment is a good protection measure since

¹⁷⁵ Ernest Van Den Haag, PhD, Late Professor of Jurisprudence at Fordham University, "For the Death Penalty," New York Times, Oct. 17, 1983

¹⁷⁶ J. Budziszewski, PhD, Professor of Government and Philosophy at the University of Texas at Austin, "Capital Punishment: The Case for Justice," OrthodoxyToday.org, Aug./Sep. 2004

it eliminates criminals who may pose a serious threat to the society by delaying their actions and causing harm to others.

This argument is based on the fact that some offenders cannot be cured and are a permanent threat to the society. Retentionists believe that life imprisonment without parole is not sufficient, since there is always the chance of escape or the release might be possible.

Closure for Victims

One of the core beliefs of the retentionist system is called Closure to Victims. Advocates insist that the proper execution of convicted criminals grants surviving relatives and loved ones the sense of justice and closure, thus allowing them to seek the end after long years of deep pain.

This is based on the fact that relatives of victims are known to suffer psychologically and emotionally. According to retentionists, capital punishment serves as a process of closure and an avenue of vindication, compensating the possibility of continuation of injustice and the healing process. Without punishment by execution, the further presence of the criminal in the society can only multiply the feelings of loss and strengthen the tendencies to violence so that the final effect is the strengthening of the conflict in the society. As such, retentionists claim that abolition will legitimise the offender and redefine the victim as an afterthought.

Custom, Tradition, and Public Opinion

Retentionist views also tend to argue that culture and history as well as the mood of the masses should be the determinants of legislative acts on the capital punishment. They affirm that popular support over a long period of time- especially among those

legal systems that have a penalistic background- must be considered and be preserved.

This is based on the fact that the law in modern times must be in touch with the shared values and expectations of the societies in which they are applied. Retentionists believe that the death penalty is embedded in the history and the social institutions of some societies and its abolition would threaten institutional legitimacy and democratic rule.

Analysis of the arguments of the retentionists

The retentionist approach, which advocates the maintenance of capital punishment, is based on a cluster of arguments based on considerations of justice, deterrence, retribution, safety to the community and maintenance of cultural and legal traditions. This paper critically evaluates these justifications and gauges their merits and demerits.

Deterrence and Public Safety:

Retentionists believe that death penalty serves as a deterrence against crime and makes people hesitate to commit a serious crime. To them, the threat of being executed is a powerful punitive tool, hence improving security in the society.

It relies on the fact that the solemnity of the death penalty creates a major deterrence effect. Retentionists argue that when an individual is threatened to lose his/her life, he/she is likely to be deterred to engage in the commission of heinous crimes more so when such a crime is planned or well calculated.

Critics respond that there is little empirical support on the argument that capital punishment is a strong deterrent. They assert that socio-economic issues, level of education as well as chances of being caught have higher effects on the potential criminal. Correspondingly, critics propose a multidimensional, evidence-based crime prevention approach that eradicates the causes of crime and is based on more effective deterrence measures.

Retribution and Justice:

One major argument that has been supported by retentionists is the fact that death penalty is a way of responding justly to the most serious offences. The proponents argue that the capital punishment is a justifiable form of retribution that accords to the principles of proportionality.

It is based on the belief that penalty should be proportional to the crime. Retentionists state that death penalty is a good reaction to the extreme violence or terrorism or other morale offensive behavior. According to them, death penalty allows the society to show moral indignation and secures justice by taking action to ensure that the offender is faced with a punishment that suits his or her offence.

The critics respond that death penalty actually fails to bring justice since it does not deal with the root causes of crimes and does not offer rehabilitators and restoration avenues. Opponents argue that there are other forms of sanctions, which can fully fulfill the principles of proportionality and retribution without imposing the irreversible punishment of execution. They promote a change in priorities to rehabilitation, restorative justice and correction of the root causes of crime.

Public Safety and Incapacitation:

The role of incapacitation and public safety is one of the main issues in the discussion of capital punishment today. Retentionists argue that death penalty

eliminates dangerous offenders out of society and hence increases the security of the community. The death penalty, in the view of this, averts more crimes and protects the populace by eliminating potential offenders who present a significant danger.

The intellectual basis of this argument lies on the fact that some criminals are beyond redemption and therefore will always be a menace. Retentionists claim that without parole life imprisonment cannot ensure the safety of the population since it cannot exclude the risk of escape and the future release on parole. In their perspective, death penalty gives the surest and final way of keeping menacing people at bay in the society.

The opponents respond that incapacitation argument is flawed because life imprisonment without the parole can serve a similar purpose. They argue that the high possibility of escape or being put on parole has been significantly reduced due to the better prison security, technological changes and administrative changes. In addition, they stress the fact that rehabilitation programs and the possibilities of the offender change make the irredeemability assumption doubtful.

Closure for Victims' Families:

There is a lot of academic controversy over the issue of closure to families of the victims. Retentionists argue that the death penalty of the perpetrator is an essential step towards addressing the emotional requirements of the surviving family members. They claim that death penalty provides closure, vindication, and way of healing to those who have suffered a deep loss. The concept of death penalty in this construct has been perceived as the tool of fulfilling psychosocial needs of victim families.

This opinion is based on the understanding of the strong emotional load that relatives of victims have to carry. Retentionists assume that the application of the final punishment allows families to move on, knowing that justice has been achieved. They also argue that not executing the death penalty can strengthen the feeling of injustice and withhold families of their necessary means of healing and closure.

But skeptics are adamant that the reason of seeking closure should not be the only reason why capital punishment should continue. They promote comprehensive support systems counseling, financial aid and easy to obtain justice system instead of using death penalty as the means of mandatory closure.

Cultural and Legal Tradition:

Retentionist reasons hold that cultural and legal heritages along with the general opinion of the people ought to be used in the current argument on capital punishment. They argue that popular support of death penalty in the society, which is based on punitive justice systems, must be considered and maintained.

The retentionist approach can be explained by the assumption that the law should reflect the values and demands of the society where it operates. In this reasoning, cultural and historical backgrounds, as well as popular opinion are critical in making criminal justice policy. Retentionists argue that capital punishment is rooted in some traditions and that it should not be abolished because it brings order in the society and ensures a democratic government.

The opponents of this manner underline the necessity to follow the international human rights standards that give priority to the preservation of the inherent dignity and rights of all people. They claim that the necessity to guarantee fairness, justice, and the protection of human rights cannot be replaced by the cultural and historical

traditions. The opponents explain that the process of capital punishment should move forward with the development of society, and should meet the international standards of human rights rather than being restricted by the cultural or legislative traditions that can continue the evil injustice indefinitely.

Arguments of Shariah and its rationale

General rationales for capital punishment in Islamic Law

When confronted with the issue of capital punishment in Islamic jurisprudence, several underlying rationales emerge:

- Life for whole humanity
- Retribution
- Deterrence
- Purification from Sin

Life for whole humanity

The passage of the death penalty is one of the protective measures of humankind. When the potential criminal could not divine that he would get executed by virtue of the legal principle of Qisas, the foreknowledge of that law serves as a mighty deterrence. This expectation can prevent the offender to commit the crime thus saving the life of the potential victim. At the same time, the criminal is protecting his life by restraining himself. Thus, Qisas has two protective roles, it prevents violent crime and preserves the sanctity of human life on both sides. Through this principle of deterrence, the legal system assists in social order and reduce cases of major crimes. Quran says:

“There is life for you in retaliation, O people of understanding, so that you may refrain.”¹⁷⁷

“Whoever kills a person -unless it is for murder or corruption on earth- it is as if he killed the whole of mankind; and whoever saves it, it is as if he saved the whole of mankind.”¹⁷⁸

Retribution

Retribution is the view that a criminal should be made to suffer the same fate as the victim and this is most relevant when addressing crimes like murder. This is where the doctrine of the proportionality becomes most important because the fundamental legal principle is that all individuals are equal before the law no matter the social, economic or political status, and should be equally punishable based on their actions. As a result, the legislative and judicial procedures need to pass penalties that are as severe as the crime is, thus making sure justice does not overrule nor under calculate the seriousness of the evil. When a murderer receives the same treatment as the death that was unlawfully caused a retribution is achieved on the principle of equality and the moral balance disturbed by the crime is reinstated. Quite on the contrary, rather than being vengeful, retributivism is based on the principle of fairness, legal uniformity, and social justice, and confirms the fact that no one is above the law and supports the idea that justice should be proportionate to the severity of the injustice committed. Quran says:

“A life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth and an equal wound for a wound.”¹⁷⁹

¹⁷⁷ Qur'an: 2, 179

¹⁷⁸ Qur'an: 5, 32

¹⁷⁹ Qur'an: 5, 45

Deterrence

Deterrence can be defined as the ability of a state to stop illegal actions by using the threat of punishment. When a man realizes that a murder is a deliberate act punishable by the unchangeable death penalty, the possibility of being prosecuted by the law becomes a very terrifying threat. This is the preventative role of punishment and it is necessary in maintenance of order in society as well as protection of innocent lives. With this, Quran dictates that punishments should be given in the presence of a large number of people so that the seriousness of the punishment is clearly seen by the society. This kind of publicity is not meant to humiliate the guilty but to scare the potential offenders and this is done strategically to enforce the seriousness of the act and ensure a collective deterrence. Through experiencing the consequences of wrong actions, the community learns the gravity of wrongdoings and the unavoidability of justice, and thus develops a culture of respecting the law system. This way, the Quranic system is holistic: it punishes a crime and at the same time strives to prevent future crimes and guarantee the safety of people. Quran says:

“And let a group of believers witness their punishment.”¹⁸⁰

Purification from Sin

Punishments in Islamic law purify the sin of the offender.

“Ubada bin As-Samit said: Allah's Apostle said: ... The Prophet (PBUH) added: Whoever among you fulfills his pledge will be rewarded by Allah. And whoever indulges in any one of them and gets the punishment in this world, that punishment will be expiation for that sin. And if one indulges in any of them, and Allah conceals his sin, it is up to Him to forgive or punish him. So we swore allegiance for these.”¹⁸¹

¹⁸⁰ Qur'an: 5, 33

¹⁸¹ Hadith; Sahih Bukhari: 18

Rationale for the Punishment of Murder (*Qisas*)

The Islamic legal sanction referred to as *qisas* is founded on the principle of life being a sacred inalienable right of any individual. The Qur'an (5:32) states that unlawfully depriving a human being of life is equivalent to killing every member of humanity, thereby illustrating the gravity of this crime. Islam forbids any action that ends life unfairly as such action violates one of the five *Maqāṣid al-Sharī'ah*: the fundamental goals of the Islamic law: the protection of life, religion, intellect, lineage, and property.

As a result murder is not just a crime against another person but also a crime against the godly moral order. Formal means of legal redress like *qisas*, are meant to preserve justice, prevent aggression and ensure social balance through the Islamic jurisprudence. Against the illegal spillage of blood, this scheme renews the concept of human dignity and shields people who have a right to live.

Rationale for the Punishment of *Zina*; Adultery

Within Islamic jurisprudence, adultery (*zina*) is regarded as a grave danger to the preservation of lineage (*nasl*), one of the five core objectives formulated in *Maqāṣid al-Sharī'ah*. The protection of the family unity and correct parental identification is an essential condition of the preservation of the social order and morality stability. Adultery violates the principles and hence encourages confusion about paternity and thus destroys the purity of a marriage and family.

As a result, adultery is not characterised as a personal moral failure but as a criminal act to be punished by law. The Islamic legal systems consider it a criminal offence in order to preserve the lineage, maintain moral uprightness and discontinue the evil

that radiates out of such an action. The formality of the legal reaction highlights the communal and family responsibility of the religion.

Rationale for the Punishment of *Hirabah* (Armed robbery)

Exegesis of the Qur'ānic basis for the criminalization of *Hirabah* (armed robbery) and its prescribed punishment reveals that protection of both life and property constitutes an unequivocally guaranteed right for every individual. An illegal introduction of damage to an individual or unfair taking of one's property is a direct violation of two of the five fundamental purposes of *Maqāṣid al-Sharī'ah*, i.e. the protection of life and of property. These crimes are therefore accorded the highest levels of seriousness since they not only threaten individual life but also the prosperity and calmness of the society at large. To this effect, Islam is codified with certain laws that are meant to be deterrent to aggression and the attainment of justice. By applying these provisions, the Islamic law aims at creating an environment where people and communities could live and grow without fear.

Rationale for the Punishment of *Riddah* (Apostasy)

Apostasy, referred to under Islamic jurisprudence as *Riddah*, has always been made a crime, the penalty of which is death, as a policy not to police the individual belief but to protect the polity. Traditionally, and especially in the framework of early Islamic politics, apostasy was seen as a kind of treason, equivalent to high treason in the modern legal language. The justification of harshness of punishment is based on the threat that apostasy is to the unity and purity of the community. Far from being considered a private matter, apostasy is framed as an act of betrayal capable of destabilizing the Muslim community (*Ummah*) and inviting external interference. Islamic law calls out the worst forms of penalties possible to ensure

that the faith is not lost and social order is maintained in the form of death of an apostate.

Analysis of Arguments of International Human Rights

The modern argument of the topic of capital punishment revolves around complex moral issues. At the heart of this debate is a conflict of interests on the rights of life, dignity of the human being, immorality, social and psychological consequences and need to reform the judicial system. The current analysis summarizes and critically examines such arguments outlining their strengths and weaknesses in the broader debate over capital punishment.

Right to Life

The main argument against capital punishment is based on the right of life which is a fundamental right. Critics continue to argue that each human being has his or her inalienable right to life, and the state must not have authority to take away that life whatever the severity of the offence. Consequently, the execution procedure is regarded as infringement of this right and the general human dignity and respect.

The premise behind this argument is based on the understanding that human life is sacred in nature. The critics are saying that it is the role of the state to preserve and enforce life and not to destroy it through execution. They emphasize potential of rehabilitation and redemption, even among the most heinous criminals.

It can be said that the pro-death penalty party will cite that the right to life is not sacrosanct and can indeed be relinquished when one commits a crime the severity

of which warrants the final punishment. They also argue that the right to life should be struck off against the rights of victims and the whole community.

Human Dignity

Opponents of capital punishment argue that the aspect of capital punishment endangers the dignity of the human being being executed. They justify that all human beings have an intrinsic value and should be treated with respect and dignity regardless of their deeds.

This argument is based on the notion that capital punishment is degrading and inhuman treatment and it is inconsistent with the concept of human dignity. It has been alleged by observers that the execution process dehumanizes people and it only serves as an object of punishment.

The supporters of capital punishment can retaliate by stating that the nature of some criminal activities should get a punishment equal to the crime. They argue that the upholding of human dignity is carried over to the rights and welfare of the victims and the society in general.

Immorality and Ethical Concerns

Immorality and Ethical Concerns [The opponents of the capital punishment often claim that the practice implies a paradox: the willful killing of a human being in the name of justice. This, they claim, would be morally unacceptable, as this would be against the ideals of compassion, forgiveness, and the importance of human life.

This group of criticism is founded on the understanding that government-authorized killing is ethically similar to individual killing. By implication, those who advocate capital punishment on the basis of retributive justice are considered as being complicit to maintaining a cycle of violence and vengeance rather than promoting reconciliation, social cohesion or common good.

Advocates, in their turn, argue that ethical judgment is subjective and culturally relative in nature. They argue that certain crimes are so heinous and ethically disgusting that death penalty can be considered the only response. In their opinion, the capital punishment is the moral duty to administer justice and protect the society against hardcore criminals.

Social and Psychological Issues

The opponents of death penalty highlight its social and psychological consequences to the affected individuals and families. They claim that execution can create lasting psychological trauma and permanent adverse consequences to the family of both the offender and the victim.

This assertion is based on the fact that capital punishment has far reaching emotional and psychological effects. The opponents argue that the death penalty is a form of violence and trauma that can affect not just those people directly involved in the case but also society as a whole.

The proponents of the death penalty respond that they should focus on the victims and their families who have suffered a lot and lost. They argue that, the death penalty is capable of providing closure and justice to relatives of the victims so that they can move on and start the healing process.

Reforms in the Judicial System

The supporters of the abolition of the death penalty also often point to the necessity to implement widespread reforms in the judicial system so that to reduce the role of bias, avoid wrongful convictions, and to remove procedural limitations that weaken the delivery of justice. Critiques of this nature argue that since capital punishment is irreversible, the restrictions that govern its administration should be strict and dependable.

The arguments behind this stance take into account the unavoidable danger of mistrials and the chance of killing innocent people. In turn, critics underline a strong procedural protection, that is, access to effective legal counseling, strict burden of proof, and thorough appeal process as the crucial conditions of fair result.

Capital punishment adherents reply that specific reforms can address the above issues and firm and just implementation of the death penalty. They are thus of the position that it should be made better rather than be abolished.

Conclusion

The argument still continues on the use of capital punishment throwing complicated questions based on the right to life, moral validity of judgment, human dignity and the necessity to reform the courts. The proponents argue that capital punishment serves as a way of dispensing justice, deterring the wrongdoings, and serving the retributive justice; those opposed to it state that the process has immense dangers; the greatest being wrongful conviction, and that they find the irreversibility of the process morally objectionable. These issues keep fueling the incapability of the capital punishment to promote genuine justice.

The abolitionist views focus on the protection of human rights and put more emphasis on rehabilitation and fair process as opposed to retribution. The supporters of alternative sanctions believe that the principles of justice and protection of the population can be achieved without using execution. The informed, empirically based debate must continue as the debate evolves so that the legal changes needed to fix gaps in the system must also be sought. A middle ground (based on fairness, mercy, and concern about human dignity) is still essential to the design of a more humane and just criminal justice system.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

The modern trends of the world development indicate a significant step towards the elimination of the capital punishment. At the present, a vast majority of states either have an outright ban or a de facto moratorium, and the abolitionist case has gained steady validity within the context of the International Human Rights Law. Under this view, death penalty is an infringement of the right to life and human dignity and therefore the complete abolishment is gaining more and more supporters. Still, the debate between the abolitionist and retentionist camps is still controversial, as it is a complex landscape of ethical, legal, and social issues. Abolitionists focus on a person, human rights, fairness of procedure, and the possibility of rehabilitation, retentionists focus on justice, deterrence, and retributive logic. This kind of divergence does not allow a universal agreement.

According to the Islamic tradition, death penalty is part of the Shariah criminal justice system. It is based on Quran and Sunnah, but closely limited in its application and evidence is scrutinized. The Islamic jurisprudence lays emphasis on justice and the difficulty in applying the penalty is a factor that shows that the jurisprudence is more inclined towards deterrence than execution. Total abolition is therefore incompatible with the Islamic doctrine though a great value is attached to procedural safeguards, fairness and avoiding miscarriage of justice. The balanced approach, in turn, is the reformation and the enhancement of judicial systems, both Muslim and non-Muslim, to achieve justice, to avert the abuse, and to make such systems compatible with the changing human-rights norms. Such reform provides

a way forward in terms of reconciliation of the values of global law and Shariah in a bid to have a human and just criminal justice system.

Recommendations

Some proposals are put forward to solve the complexity between international human rights and the Shariah

To start with, even though there is acceptance of the death penalty in the Islamic law, there is a need to make changes in the law at this time, which will emphasize its limiting and exceptional nature. This entails adhering to the strict evidentiary requirements articulated in Islamic jurisprudence and broadening the utilization of alternatives, such as qisas, diyat, and ta'zir, to mitigate the severity of punishment whenever feasible. These systems represent the Islamic justice.

Secondly, states with majorities of Muslims should be encouraged to participate positively in international instruments of human rights and at the same time be loyal to the Shariah. Rather than viewing a fundamental clash between universal standards and Islamic law, a methodologically sensitive and reform-minded approach can find a path between universally shared human-rights values and the maqasid al-shariah, and particularly the protection of life and dignity.

Third, the judicial system is required to be overhauled in any jurisdiction where capital punishment still exists, especially in the Muslim world. These reforms ought to include the establishment of autonomous judiciaries, improvement of the right to counsel and fair procedures as well as an orderly mechanism of review and appeal of death-sentence findings. Such actions are needed in order to support justice and provide that capital punishment will be in line with international legal standards as well as the moral essence of Shariah.

Lastly, to further understand the scope and moral purpose of capital punishment in Islam, academic discourse and mass-education programs are to be promoted. Myths that lead to its excessive use or politicization should be corrected by education, wise use of the media, and a long-term interfaith and legal dialogue.

These recommendations can help achieve a healthier and more human way of delivering justice which respects the principles of Islamic legal tradition and at the same time connects to the changing norms of international human rights.

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