

## Worldwide Debate to Abolish the Death Penalty Forever

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### Abstract

**Death penalty** or capital punishment is a legal process whereby a person is put to death by the state as a punishment for a crime. The judicial decree that someone be punished in this manner is a **death sentence**, while the actual process of killing the person is an **execution**. Crimes that can result in a death penalty are known as *capital crimes* or *capital offences*. (**Wikipedia, Capital Punishment**)Capital punishment has, in the past, been practised by most societies. Currently 58 nations actively practise it, 97 countries have abolished it *de jure* for all crimes, 8 have abolished it for ordinary crimes only (maintain it for special circumstances such as war crimes), and 35 have abolished it *de facto* (have not used it for at least ten years and/or are under moratorium). Amnesty International considers most countries abolitionist, overall, the organisation considers 140 countries to be abolitionist in law or practice. (**Amnesty, "Abolitionist and retentionist countries"**).

**Keywords:** Death penalty, worldwide debate.

### Introduction

Capital punishment is a matter of active controversy in various countries and states, and positions can vary within a single political ideology or cultural region. In the European Union member states, Article 2 of the Charter of Fundamental Rights of the European Union prohibits the use of capital punishment. The Council of Europe, which has 47 member states, also prohibits the use of the death penalty by its members.

The United Nations General Assembly has adopted, in 2007, 2008 and 2010, non-binding resolutions calling for a global moratorium on executions, with a view to eventual abolition. (United Nations, "moratorium on the death penalty", 2007). Although many nations have abolished capital punishment, over 60% of the world's population live in countries where executions take place, such as the People's Republic of China, India, the United States of America and Indonesia, the four most-populous countries in the world, which continue to apply the death penalty (although in India, Indonesia and in many US states it is rarely employed). Each of these four nations voted against the General Assembly resolutions. ("**Asia Times Online**", 2004).

Among countries around the world, almost all European and many Pacific Area states (including Australia, New Zealand and Timor Leste), and Canada have abolished capital punishment. In Latin America, most states have completely abolished the use of capital punishment, while some countries, however, like Brazil, allow for capital punishment only in exceptional situations, such as treason committed during wartime. The United States (the federal government and 36 of its states), Guatemala, most of the Caribbean and the majority of democracies in Asia (e.g. Japan and India) and Africa (e.g. Botswana and Zambia) retain it. In most places that practice capital punishment today, the death penalty is reserved as punishment for premeditated murder, espionage, treason, or as part of military justice. In some countries sexual crimes, such as rape, adultery and sodomy, carry the death penalty, as do religious crimes such as apostasy (the formal renunciation of one's religion). In many retentionist countries (countries that use the death penalty), drug trafficking is also a capital offense. In China human trafficking and serious cases of corruption are also punished by the death penalty. In militaries around the world courts-martial have imposed death sentences for offenses such as cowardice, desertion, insubordination, and mutiny.

### History and Background

Capital punishment is the lawful infliction of death as a punishment and since ancient times it has been used for a wide variety of offences. In the history of punishment, capital punishment has always occupied a very important place. Capital punishment for murder, treason, arson, and rape was widely employed in ancient Greece. The Romans also used it for a wide range of offenses. Yet capital punishment has been prescribed for many crimes not involving loss of life, including adultery and blasphemy. The ancient legal principle *Lex talionis* — "an eye-for-an-eye, a tooth-for-a-tooth, a life-for-a-life"—which appears in the Babylonian Code of Hammurabi, was invoked in some societies to ensure that capital punishment was not disproportionately applied.

By 1500 in England, only major felonies carried the death penalty – treason, murder, larceny, burglary, rape, and arson. From 1723, under the "Waltham Black Acts", Parliament enacted many new capital offences and this led to an increase in the number of people being put to death each year. In the 100 years from 1740 – 1839 there were a total of up to 8753 civilian executions in England & Wales, the peak year was 1785 with 307. Remember that the population in 1800 was just 9 million.

Reform of the death penalty began in Europe by the 1750's and was championed by academics such as the Italian jurist, Cesare Beccaria, the French philosopher, Voltaire, and the English law reformers, Jeremy Bentham and Samuel Romilly. They argued that the death penalty was needlessly cruel, over-rated as a deterrent and occasionally imposed in fatal error. Along with Quaker leaders and other social reformers, they defended life imprisonment as a more rational alternative. It has been said that in 1780 there were some 240 crimes for which the death penalty could be inflicted in England, and in the reign of Henry VIII no less than 72000 people were reported to have been executed, mostly for trivial offence. **(Donald, 1956, p. 369)**

By the 1850's, these reform efforts began to bear fruit. Venezuela (in 1863) and Portugal (in 1867) were the first nations to abolish the death penalty altogether. In the United States, Michigan was the first state to ban the death penalty, in 1847. Britain effectively abolished capital punishment in 1965.

In the United Kingdom, it was abolished (except for treason) in 1973, the last execution having taken place in 1964. It was abolished totally in 1998. France abolished it in 1981; Canada abolished it in 1976 and Australia in 1985. In 1977, the United Nations General Assembly affirmed in a formal resolution that throughout the world, it is desirable to "progressively restrict the number of offenses for which the death penalty might be imposed, with a view to the desirability of abolishing this punishment". Since World War II there has been a consistent trend towards abolishing the death penalty.

### **Death Penalty Worldwide**

In total 58 countries retain the death penalty. More than two-thirds of the countries in the world have now abolished the death penalty either in law or in practice (abolitionist states).

Abolitionist states in law and practice

- Abolitionist for all crimes: 94
- Abolitionist for ordinary crimes only: 10
- Abolitionist in practice: 35

Total abolitionist in law or practice: 139 (Amnesty International, 2013, "Abolitionist and retentionist countries".)

The 12 countries with the most executions in 2008:

China (at least 1,718), Iran (at least 346), Saudi Arabia (at least 102), USA (37), Pakistan (at least 36), Iraq (at least 34), Viet Nam (at least 19), Afghanistan (at least 17), North Korea (at least 15), Japan (15), Yemen (at least 13), Indonesia (10).

In 2008, only 25 out of 59 countries that retain the death penalty carried out executions. Two states abolished the death penalty for all crimes in 2008 (Uzbekistan and Argentina).

In 2008 the worldwide execution rate was at least 2,390, with the top 5 nations accounting for 93% of the total (China responsible for executing approximately 1,718, Iran 346, Saudi Arabia 102, the United States 37, and Pakistan 36) (Amnesty International, 2013, *Death penalty statistics*)

Most of the democratic countries of Europe and Latin America, Canada, Australia, New Zealand have abolished death penalty. Among western countries Portugal was the first to abolish death penalty. In Portugal the last execution took place in 1846, and the punishment was officially abolished in 1867 (Karzon, 2008, p. 268)

Amnesty International revealed that more people were executed in Asia than in any other part of the world in 2008 because China carried out more executions than the rest of the world put together. By contrast, in Europe only one country continues to use the death penalty: Belarus. The report *Death Sentences and Executions in 2008*, which provides a world overview on the death penalty, found that between January and December 2008 at least 2,390 people were executed in 25 countries around the world with at least 8,864 sentenced to death in 52 states.

The good news is that executions are only carried out by a small number of countries, which shows that we are moving closer to a death-penalty free world," "By contrast, the bad news is that hundreds of people continue to be sentenced to death and suffer in the many countries that have not yet formally abolished the death penalty.

In December, the United Nations General Assembly (UN GA) adopted by a large majority a second resolution calling for a moratorium with a view to abolish the death penalty. Europe and Central Asia is now virtually a death penalty free zone following the abolition of the death penalty in Uzbekistan for all crimes. There is just one country left – Belarus – that still carries out executions. In the Americas, only one state – the United States of America (USA) – consistently executes.

However, even the USA moved away from the death penalty in 2008. This year, the smallest number of executions since 1995 was reported in the USA. The majority of countries now refrain from using the death penalty. Furthermore, in 2008 Amnesty International recorded only 25 out of 59 countries that retain the death penalty actually carried out executions (Amnesty International, 2013, *Death penalty statistics*). The practice of states indicates that there is increasing consolidation of majority international consensus that the death penalty cannot be reconciled with respect for human rights. Despite positive developments a number of tough challenges

remain. Countries in Asia carried out more executions in 2008 than the rest of the world put together. The region with the second highest number of reported executions was the Middle East.

Capital punishment is used in most of the countries to punish murder or war related crimes. In some countries some non-violent crimes are punishable with death. Such as in China crimes relating to drug and business are punishable with death. In Vietnam, Malaysia and Indonesia capital punishment is extensively used for drug related crimes (Karzon, 2008, p. 268).

In 2008 the world moved yet closer towards total abolition of the death penalty. On 18 December 2008, the UN GA adopted resolution 63/168 (2008) “moratorium on the use of the death penalty”. Resolution 63/168 builds upon the 2007 UN GA resolution which expressed concern at the application of the death penalty and called on states that still retain it to, inter alia, respect international safeguards guaranteeing the rights of those facing the death penalty, to reduce the number of offences for which the death penalty may be imposed and to establish a moratorium on executions with the view to abolishing the death penalty.

### **Regional Trends of Execution of Death Penalty**

The majority of countries now refrain from using the death penalty. The practice of states indicates that there is increasing consolidation of majority international consensus that the death penalty cannot be reconciled with respect for human rights. Despite positive developments a number of tough challenges remain. Countries in Asia carried out more executions in 2008 than the rest of the world put together. The region with the second highest number of reported executions was the Middle East.

### **ASIA**

More people were executed in Asia in 2008 than in the rest of the world put together. At least 1,838 (76%) of all total reported executions were carried out by Asian states. The following 11 countries are known to have carried out a total of at least 1,838 executions in 2008: China (at least 1718), Pakistan (at least 36), Viet Nam (at least 19), Afghanistan (at least 17), North Korea (at least 15), Japan (15), Indonesia (10), Bangladesh (5), Mongolia (at least 1), Malaysia (at least 1), and Singapore (at least 1) (Amnesty International, 2013, *Death sentences and executions in 2008: Regional Trends*).

The study highlights the abuse of law and procedure and arbitrariness and inconsistency in the investigation, trial, sentencing and appeal stages in death penalty cases. The death penalty in India has not been used only in the “rarest of rare cases” – as claimed. On the contrary, there is ample evidence to show that the death penalty has been an arbitrary, imprecise and abusive means of dealing with defendants. The death penalty is also used disproportionately against ethnic minorities, the poor or other disadvantaged groups. There were no reported executions in India in 2008. However, at least 70 people were sentenced to death.

### **MIDDLE EAST AND NORTH AFRICA**

The region with the second highest number (21%) of executions in 2008 was the Middle East and North Africa. The following nine countries were known to have carried out a total of at least 508 executions: Iran (at least 346), Saudi Arabia (at least 102), Iraq (at least 34), Yemen (at least 13), Libya (at least 8), Egypt (at least 2), Bahrain 1, Syria (at least 1) and the United Arab Emirates (at least 1). Amnesty International remained concerned about the application of the death penalty in Iran. Some of the cruel and inhumane methods used to execute at least 346 people in 2008 included stoning and hanging. The number of public hangings in Iran decreased in 2008 after the Chief Justice issued a decree banning them. In July 2008 Amnesty International and nine other human rights organizations issued a joint public statement calling for an end to the execution of juvenile offenders in Iran. (Amnesty International, 2013, *Death sentences and executions in 2008: Regional Trends*)

### **THE AMERICAS**

During 2008, 38 executions were known to have been carried out in the Americas – 37 in The USA and one in the twin island state of St Kitts and Nevis. At least 125 people were sentenced to death in six countries: USA (at least 111), Trinidad and Tobago (10), Bahamas (at least 1), Saint Kitts and Nevis (at least 1), Saint Vincent and Grenadines (at least 1), and Jamaica (1). The United States of America (USA) remains the only country in the Americas that regularly executes.

In USA, 37 executions were carried out by the authorities in nine states: Texas (18), Virginia (4), Georgia (3), South Carolina (3), Florida (2), Ohio (2), Oklahoma (2), Mississippi (2), Kentucky (1). There is increasing evidence that the USA itself is slowly turning away from the death penalty. Sentences have continued to drop since the peak in the mid-1990s. The 37 executions carried out in 2008 represented the lowest number since 2005. Furthermore, a number of death sentences were commuted to life imprisonment, including in the case of a prisoner with a long history of mental illness. During 2008, four more men were released from death rows on grounds of innocence, bringing to more than 120 the number of such cases since 1975. Texas continues to execute more people than any other state in the USA. The state of Texas ignored international outcry,

including appeals from the UN Secretary-General for the execution to be stopped. The authorities carried out the execution despite a 2004 judgement by the International Court of Justice which called for judicial review and reconsideration of convictions and sentencing of José Medellín and 50 other Mexican national also denied the right to consular services in violation of international law (Amnesty International, 2013, *Death sentences and executions in 2008: Regional Trends*).

Disappearance and at least two of them had been subjected to a form of water torture known as “waterboarding” (simulated drowning). St Kitts and Nevis became the first country in the Americas outside of the USA to carry out an execution since 2003. On 19 December 2008 Charles Laplace was hanged despite remaining doubts as to whether all avenues of appeal had been exhausted (Amnesty International, 2013, *Death sentences and executions in 2008: Regional Trends*).

### **SUB-SAHARAN AFRICA**

In sub-Saharan Africa, there were only two known executions carried out in Botswana (1) and Sudan (1+). The only country to reintroduce the death penalty in 2008 was the state of Liberia.

At least 362 people were known to have been sentenced to death in 19 African countries: Uganda (114), Sudan (60), Democratic Republic of Congo (at least 50), Nigeria (at least 40), Ethiopia (39), Mali (at least 15), Chad (at least 12), Mauritania (8), Botswana (4), Ghana (3), Guinea (3), Sierra Leone (3), Gambia (2), Burkina Faso (1), Burundi (1), Niger (1), Kenya (+), Madagascar (+), and Tanzania (+). In a particularly regressive move Liberia reintroduced the death penalty for the crimes of robbery, terrorism and hijacking.<sup>25</sup> Liberia reintroduced the death penalty despite being a party to Second Optional Protocol to the International Covenant on Civil and Political Rights. (Amnesty International, 2013, *Death sentences and executions in 2008: Regional Trends*)

Approximately 40 were under the age of 18 at the time of the offence and should not have been sentenced to death. The Federal Government ignored the recommendations by the National Study Group on the Death Penalty (2004) and the Presidential Commission on Reform of the Administration of Justice (2007) to adopt a moratorium. In July 2008, a bill to abolish the mandatory death penalty under the Robbery and Firearms Act and replace it with life imprisonment was defeated in the House of Representatives. By the end of 2008, most prisoners whose forthcoming release was announced by the Federal Minister of Information in May 2007 were still on death row. Five men had their sentences commuted by the Ogun State governor. In November, the President pardoned a man who had spent 22 years on death row. No confirmed executions were carried out in 2008. In the Democratic Republic of Congo military courts sentenced at least 50 people to death during the year, including civilians (Amnesty International, 2013 *Death sentences and executions in 2008: Regional Trends*).

In Sierra Leone civil society pushed hard for the death penalty to be abolished as part of the review of the Constitution. The current draft Constitution provides for the death penalty in cases of treason, murder and armed robbery with violence.

### **EUROPE AND CENTRAL ASIA**

Europe is the only virtually death penalty-free region of the world, the only exception being Belarus where at least four people were known to be executed and at least one more sentenced to death in 2008. In Europe there is a solid and long-standing trend towards abolition of the death penalty. The Russian Federation has held a moratorium on executions and death sentences for more than ten years but still needs to abolish the death penalty in law. In Central Asia, there is a clear move towards abolition. Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan retained the death penalty when they gained independence in 1991. However, by September 2008 Kazakhstan, Kyrgyzstan, Turkmenistan and Uzbekistan had abolished the death penalty in law. Tajikistan has moratoria on executions and death sentences. Belarus is the last country in Europe and in the former Soviet Union that is still carrying out executions. All information on the death penalty in Belarus is kept secret. There are no available statistics for the number of executions, but Amnesty International estimates that as many as 400 people may have been executed since Belarus gained its independence in 1991.

Since gaining its independence from the USSR Belarus has taken some significant steps towards ending the use of the death penalty. It has reduced the scope of the death penalty, and a Constitutional Court decision in 2004 found that the death penalty was in conflict with the Constitution and that it could be abolished by the President and Parliament.

### **Arguments for and against Capital Punishment**

Capital punishment or the death penalty is one of the most debated issues in the Criminal Justice System and is a very controversial issue among society. The two most common views are either completely for or against capital punishment. Most arguments against the death penalty are for moral reason. They view it as cruel and unusual punishment, whereas arguments for the death penalty say “an eye for an eye.”

### Pro-Arguments

Arguments commonly made for supporting the death penalty are:

- Elimination of murderers by execution is fair retribution and saves potential future victims.
- Punishments must match the gravity of offence and worst crimes should be severely punished.
- It shows how seriously society looks at the most heinous crimes. Societies must establish deterrents against crime. Death sentence serves as an effective deterrent.
- Death is a just punishment and death penalty has been held constitutionally valid (*Bachan Sing V. State of Punjab*) (AIR 1980, SC 898).
- Death penalty may deter prospective criminals and other people from committing capital crimes, although studies seem to deny this claim.
- The right to life of the people, committing the offence of murder, must be forfeited.
- It provides peace of mind for many victims of crime and their families.
- Death penalty is the most effective way of protecting society from a felon.
- In terms of expenditure death penalty is less expensive than imprisonment. Housing a convict into a prison is more expensive than executing the convict.
- Without the death penalty, a person already serving a life sentence may have no reason not to kill in prison.
- Death penalty is a just retribution because the criminals should suffer the same way as their victims did.
- It enjoys democratic support of the people.
- It recognizes humankind's natural sense of justice.

### Con-Arguments

Arguments commonly made to abolish the death penalty are:

- Death constitutes "cruel and unusual punishment."
- The death penalty is used disproportionately against the poor, who cannot afford expensive legal counsel, as well as racial, ethnic and religious minorities.
- The death penalty is applied arbitrarily and inconsistently.
- Wrongly convicted, innocent people have received death penalty sentences, and tragically, were killed by the state.
- A rehabilitated criminal can make a morally valuable contribution to society.
- Killing human life is morally wrong under all circumstances. Some faith groups, such as the Roman Catholic Church, oppose the death penalty as not being "pro-life."
- An execution arising out of miscarriage of justice is irreversible.
- Capital punishment is lethal vengeance which brutalizes the society that tolerates it.
- Capital punishment does not have deterrent effect. Hired murderers take the risks of criminal justice system whatever the penalties. Thus it has no rational purpose.
- Death penalty brutalizes the society by conveying the message that killing people is sometimes right in certain situations.
- The fear of the death penalty has never reduced crime. Through most of history executions were public and brutal. Some criminals were even crushed to death slowly under heavy weight. Crime was more common at that time than it is now. Evidence shows execution does not act as a deterrent to capital punishment.
- The motives for the death penalty may be for revenge. Legal vengeance solidifies social solidarity against law breakers and is the alternative to the private revenge of those who feel harmed.
- The victim is already dead-you cannot bring him back. When the opponents feel "fear of death" will prevent one from committing murder, it is not true because most murders are done on the "heat of passion" when a person cannot think rationally.
- Death penalty is a violation of the basic human rights.
- Death penalty is irrevocable and should be avoided to avoid judicial murder.
- The death penalty is killing. All killing is wrong; therefore the death penalty is wrong.

### Capital Punishment under Indian Penal Code

The recent trend in India is clearly towards the abolition of death sentence and it appears that at present the death sentence is being allowed only in cases where there is not the slightest trace of any extenuating circumstances (Siddique, 2005, p. 363). In *Ediga Anamma V. State of Andhra Pradesh* (1974), the supreme court of India observed: "While murder in its aggravated form in the extenuating factors connected with crime, criminal or legal process, still is condignly visited with death penalty, a compassionate alternative of life imprisonment in all other circumstances in gaining judicial ground." (Mahajan, 2005, p. 151)

In *Raghubir Sing V. State of Haryana* (1974), although the Supreme Court accepted the contention that the murder was treacherous, death sentence was reduced to life imprisonment.

In *Bachan Sing V. State of Punjab* (AIR 1980, SC 898), the Supreme Court held by a majority of four to one

that the provision of death sentence as an alternative punishment for murder in section 302 of the Indian penal Code is not unreasonable and is in the public interest. Earlier in *Jagmohan Sing v. State of U.P* (AIR 1973 SC 947) the Supreme Court held that death penalty *per se* is not violative of Article 19 of the Indian constitution. The provision of death sentence as an alternative punishment for murder does not violate Article 21 of the Constitution. The framers of the Constitution did not consider death sentence for murder as a degrading punishment which would defile “the dignity of the individual”. To commit a crime is not an activity guaranteed by Article 19(1) of the constitution.

The offences which are punishable with death sentence under the Indian Penal code 1860 include:

- Waging war against the state (Sec. 121)
- Abetment of mutiny (Sec.132)
- Murder (Sec. 302)
- Abetment of suicide committed by a child or insane (Sec 305)
- Attempt by life-convict to murder (Sec 307)
- Kidnapping for ransom (Sec 364A)
- Dacoity with murder (Sec 396)

It is significant to note that although the aforesaid offences are punishable with death but there being alternative punishment of life imprisonment for each of them, it is not mandatory for the court to award exclusively the sentence of death for these offences. In fact where the court is of the opinion that the award of death sentence is the only appropriate punishment to serve the ends of justice in a particular case it is required to record ‘special reason’ justifying the sentence stating why the award of alternative punishment i.e. imprisonment for life would be inadequate in that case. (Sec.354 (3) Code of Criminal Procedure).

While observing in *Bachan sing* that “standardization” of the sentencing process in relation to capital punishment is an almost impossible task, the court nevertheless attempted to provide some guidelines regarding the choice to be made between death sentence and life imprisonment: (Siddque, 2005, p. 370)

If the murder has been committed after previous planning and involves extreme brutality or

If the murder involves exceptional depravity or If the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed- while such member or public servant was on duty or in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant as the case may be, or had ceased to be such member or public servant or if the murder is of a person who had acted in the lawful discharge of his duty under section 43 of the Code of Criminal Procedure,1973, or who had rendered assistance to a magistrate or a police officer demanding his aid or requiring his assistance under section 37 and Section 129 of the said Code.”

The court gave examples of the circumstances which to be given due consideration in the determination of a sentence (Siddque, 2005, p. 371):

That the offence was committed under the influence of extreme mental or emotional disturbance. If the accused is too young or old, he shall not be sentenced to death. The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society. The probability that the accused can be reformed and rehabilitated. The state shall by evidence prove that the accused does not satisfy conditions (3) and (4) above.

That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

That the accused acted under duress or domination of another person.

That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

### **Capital punishment in USA**

Recent trend in America is to restrict capital punishment only to the offence of murder and rape. Another thing is that last couple of years it tried to make the process of execution private, painless and quick as against the old methods of public execution which were brutal, painful and time consuming (Paranjape, 2007, P. 242). Several American states have abolished death punishment with beneficial results. Mr. Justice Brennan and Mr. Justice Marshall of the U.S Supreme Court in a well known decision *Furman v. The State of Georgia* (1972), observed that death penalty was unconstitutional *per se* and should be outlawed on the ground that it was an anachronism degrading to human dignity (Hymongross, 2002, P. 446). But most of the judges did not agree with the view that the 8<sup>th</sup> amendment of the American Constitution which prohibits capital punishment for all crimes and under all circumstances is a good law. Some of the American decisions suggest that the courts are convinced that death penalty *per se* is not violative of the constitution. (*Gregg v. George*, (1976); *Proffitt v. Florida*, (1976))

After the Court’s decision in *Furman Case*, an international movement to abolish the death penalty has grown based on the human rights principles of the right to life and the right to be protected from cruel, inhuman,

or degrading punishment both of which can be found in the UN Universal Declaration of Human Rights, 1948. The UN Universal Declaration of Human Rights, borrowing from the American Bill of Rights, emphasizes the right to life. The death penalty inherently contradicts this principle. In 1976, the United Nations adopted the International Covenant on Civil and Political Rights (ICCPR), which, in Article 6, recognizes the death penalty as an exception to the right to life. Article 6 includes safeguards for implementation of the death penalty and denotes abolition of the death penalty as its ultimate objective. The United States signed the ICCPR in 1992, entering a reservation on Article 6.

In 1989, the UN General Assembly adopted the Second Optional Protocol to the ICCPR Aimed at the Abolition of the Death Penalty. The United States is not expected to sign the Second Optional Protocol because countries are unable to make reservations to optional protocols.

While an average of two countries per year outlaw capital punishment, the United States, which considers itself a leader in the protection of human rights, has rejected this trend. The statistics indicate that a majority of Americans support the use of the death penalty and it is generally perceived by the public to be applied with sufficient due process.

Despite this image, great concern exists about the application of the death penalty in the United States. In February 1997, the American Bar Association issued a statement calling for an immediate moratorium on executions until policies can be instituted which “(1) ensure that death penalty cases are administered fairly and impartially, in accordance with due process, and (2) minimize the risk that innocent persons may be executed.”

Rather than join the international movement toward abolition of the death penalty, the United States adheres to the belief that execution is not cruel and unusual punishment if it is applied in a non-arbitrary and nondiscriminatory manner. In the seminal case *Furman v. Georgia*, the Supreme Court criticized the lack of standards for implementing the death penalty. Three years later, the Court in *Gregg v. Georgia* (1976), held that the death penalty does not violate the Constitution. The Court explained that its concerns in *Furman* could “be met by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance.

In the companion case to *Gregg*, *Woodson v. North Carolina* (1976), the Court held that North Carolina’s revision of its death penalty statute, which implemented a mandatory death sentence for capital crimes, was unconstitutional. The Court explained that the mandatory imposition of the death penalty in certain cases insufficiently addressed the concerns regarding unguided discretion in sentencing outlined in *Furman*. The Court held that North Carolina’s statute failed to account for the individual facts of each case and was over-inclusive. Mandatory sentencing did not eliminate arbitrariness or discrimination within the system, and was unable to accommodate the possibility of error or mitigating factors. The U.S. death penalty system today is a complex system of layers. The state legislature defines the structure of the system, including such factors as whether the sentence is imposed by judge or jury, how defense counsel is assigned to indigent defendants and the aggravating and mitigating factors to be considered for sentencing. Once a person is sentenced to death, they may file appeals, if possible, to the Supreme Court.

In *Strickland v. Washington* (1984), the Court adopted a “highly deferential” standard of “reasonably effective assistance” for counsel. To maintain a claim of inadequate counsel, the petitioner carries a heavy burden, not only of proving counsel was inadequate, but that this prejudiced the trial. In *Furman*, the Court recognized that execution holds a unique position in the criminal justice system, and structured the debate over capital punishment in terms of the procedures used to obtain the sentence, rather than on the validity of the act under the Eighth Amendment of the Constitution. The Court continued its analysis in *Trop v. Dulles* (1958) case, in which Chief Justice Warren wrote that the “Eighth Amendment ‘must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.’” Because the death penalty continues to have strong support in the United States, the Court believes execution is not considered cruel and unusual in American society. Thus, for the United States to demonstrate an “evolving standard of decency” in conjunction with the rest of the world, the use of capital punishment must be challenged in the public arena if it is ever to be prohibited in the legal arena.

### **International Agreements to Abolish the Death Penalty**

The community of nations has adopted four international treaties providing for the abolition of the death penalty. One is of worldwide scope; the other three are regional. States may become parties to international treaties either by acceding to them or by ratifying them. Following are short descriptions of the four treaties and current lists of states parties and countries which have signed but not ratified the treaties.

The *Second Optional Protocol to international covenant on civil and political rights*, aiming at the abolition of the death penalty adopted by the UN General Assembly in 1989 is of worldwide scope. It provides for the total abolition of the death penalty but allows states parties to retain the death penalty in time of war if they make a reservation to that effect at the time of ratifying or acceding to the protocol. Any state which is a party to the International Covenant on Civil and Political Rights can become a party to the protocol.

States Parties are seventy (70) in total; (**Amnesty, Ratifications of International Treaties to abolish the Death Penalty, 2008**)

ALBANIA	CROATIA	ICELAND	NAMIBIA	SLOVAKIA
ANDORRA	CYPRUS	IRELAND	NEPAL	SLOVENIA
ARGENTINA	CZECH REPUBLIC	ITALY	NETHERLANDS	SOUTH AFRICA
AUSTRALIA	DENMARK	LIBERIA	NEW ZEALAND	SPAIN
AUSTRIA	DJIBOUTI	LIECHTENSTEIN	NORWAY	SWEDEN
AZERBAIJAN	ECUADOR	LITHUANIA	PANAMA	SWITZERLAND
BELGIUM	ESTONIA	LUXEMBOURG	PARAGUAY	TIMOR-LEST
HERZEGOVINA	FINLAND	MACEDONIA	PHILIPPINES	TURKEY
BULGARIA	FRANCE	MALTA	PORTUGAL	TURKMENISTAN
CANADA	GEORGIA	MEXICO	ROMANIA	UKRAINE
CAPE VERDE	GERMANY	MOLDOVA	RWANDA	UNITED KINGDOM
CHILE	GREECE	MONACO	SAN MARINO	URUGUAY
COLOMBIA	HONDURAS	MONTENEGRO	SERBIA	UZBEKISTAN
COSTA RICA	HUNGARY	MOZAMBIQUE	SEYCHELLES	VENEZUELA

Signed but not ratified: GUINEA-BISSAU, NICARAGUA, POLAND, SAO TOMÉ and PRINCIPE

The Protocol to the American Convention on Human Rights to Abolish the Death Penalty which has been ratified by 11 states and signed by one other in the Americas. It was adopted by the general assembly for the organization of American states in 1990. It provides for the total abolition of the death penalty but allows states parties to retain the capital punishment in war time if they make a reservation to that effect at the time of ratification or acceding to the protocol.

States Parties (11) (**Amnesty, Ratifications of International Treaties to abolish the Death Penalty, 2008**)

ARGENTINA	COSTARICA	NICARAGUA	VENEZUELA
BRAZIL	ECUADOR	PANAMA	URUGUAY
CHILE	MEXICO	PARAGUAY	

Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), concerning abolition of death penalty was adopted by the Council of Europe in 1982 which has been ratified by 46 European states and signed by one other ( Russian-Federation). It provides for the abolition of the death penalty in peace time, but state parties may retain the death penalty for crimes “in time of war or of imminent threat of war”.

States Parties (46) (**Amnesty, Ratifications of International Treaties to abolish the Death Penalty, 2008**)

ALBANIA	CZECH REPUBLIC	IRELAND	MONTENEGRO	SPAIN
ANDORRA	DENMARK	ITALY	NETHERLANDS	SWEDEN
ARMENIA	ESTONIA	LATVIA	NORWAY	SWITZERLAND
AUSTRIA	FINLAND	LIECHTENSTEIN	POLAND	TURKEY
AZARBAIZAN	FRANCE	LITHUANIA	PORTUGAL	UKRAINE
BELGIUM	GEORGIA	LUXEMBOURG	ROMANIA	UK
BOSNIA	GERMANY	MACEDONIA	SAN MARINO	
BULGARIA	GREECE	MALTA	SERBIA	
CROATIA	HUNGARY	MOLDOVA	SLOVAKIA	
CYPRUS	ICELAND	MONACO	SLOVENIA	

Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), concerning the abolition of the death penalty in all circumstances, adopted by the Council of Europe in 2002 provides for the abolition of the death penalty in all circumstances, including time of war or of imminent threat of war. Any state party to the European Convention on Human Rights can become a party to the protocol.



States Parties (40) (*Amnesty, Ratifications of International Treaties to abolish the Death Penalty, 2008*)

ALBANIA	CZECH REPUBLIC	HUNGARY	MOLDOVA	SERBIA
ANDORRA	DENMARK	ICELAND	MONACO	SLOVAKIA
AUSTRIA	ESTONIA	IRELAND	MONTENEGRO	SLOVENIA
BELGIUM	FINLAND	LIECHTENSTEIN	NETHERLANDS	SWEDEN
BOSNIA	FRANCE	LITHUANIA	NORWAY	SWITZERLAND
BULGARIA	GEORGIA	LUXEMBOURG	PORTUGAL	TURKEY
CROATIA	GERMANY	MACEDONIA	ROMANIA	UKRAINE
CYPRUS	GREECE	MALTA	SAN MARINO	UNITED KINGDOM

Signed but not ratified: ARMENIA, ITALY, LATVIA, POLAND, and SPAIN.

In 1984, the UN Economic and Social Council adopted the Safeguards Guaranteeing Protection of the Rights of those facing the Death Penalty. Those minimum safeguards strengthened and explain Article 6 of the ICCPR.

1. The safeguards guaranteeing protection of the rights of those facing the death penalty, as contained in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, are as follows:

(a) In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences;

(b) Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(c) Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane;

(d) Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts;

(e) Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings; (**General Assembly resolution 2200 A (XXI), annex**).

(f) Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory;

(g) Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment;

(h) Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence;

(i) Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

2. Further to the above-mentioned safeguards, the Council, in its resolution 1989/64 of 24 May 1989, recommended that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable by:

(a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;

(b) Providing for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence;

(c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

(d) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.

3. Further, the Council in its resolution 1996/15 of 23 July 1996:

(a) Called upon Member States in which the death penalty had not been abolished to effectively apply the safeguards guaranteeing protection of the rights of those facing the death penalty, in which it was stated that capital punishment might be imposed for only the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences;

(b) Encouraged Member States in which the death penalty had not been abolished to ensure that each defendant facing a possible death sentence was given all guarantees to ensure a fair trial, as contained in article 14 of the International Covenant on Civil and Political Rights, and bearing in mind the Basic Principles on the Independence of the Judiciary (Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1985), the Basic Principles on the Role of Lawyers (Eighth United Nations Congress on the

Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1990), the Guidelines on the Role of Prosecutors (Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1990), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex) and the Standard Minimum Rules for the Treatment of Prisoners (First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1955).

(c) Also encouraged Member States in which the death penalty had not been abolished to ensure that defendants who did not sufficiently understand the language used in court were fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court;

(d) Called upon Member States in which the death penalty might be carried out to allow adequate time for the preparation of appeals to a court of higher jurisdiction and for the completion of appeal proceedings, as well as petitions for clemency, in order to effectively apply rules 5 and 8 of the safeguards guaranteeing protection of the rights of those facing the death penalty;

(e) Also called upon Member States in which the death penalty might be carried out to ensure that officials involved in decisions to carry out an execution were fully informed of the status of appeals and petitions for clemency of the prisoner in question;

(f) Urged Member States in which the death penalty might be carried out to effectively apply the Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering.

In 1989, the UN Economic and Social Council passed another resolution calling upon countries that retain the death penalty to implement the Safeguards:

Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

The Economic and Social Council, by its resolution 1996/15 of 23 July 1996, called upon Member States in which the death penalty had not been abolished to apply effectively the safeguards guaranteeing protection of the rights of those facing the death penalty.

#### **A. First safeguard**

The Human Rights Committee has, on various occasions, called for repeal of all provisions incompatible with article 6, paragraph 2, of the International Covenant on Civil and Political Rights. In addition, the Commission on Human Rights, in its resolutions 1991/61 of 6 March 1991 and 2004/67 of 21 April 2004 has urged all States that still maintain the death penalty to ensure that it is not imposed for non-violent financial crimes or for non-violent religious practice or expression of conscience. The Special Reporter on extrajudicial, summary or arbitrary executions reported in 2002 that she was deeply concerned that in a number of countries the death penalty was imposed for crimes that did not fall within the category of the “most serious”. In line with the aspiration of United Nations policy, several countries have restricted the scope of capital punishment, often as a prelude to, or in conjunction with, a moratorium on executions, with a view to moving towards complete abolition.

In her interim report to the General Assembly in 2000, the Special Reporter of the Commission on Human Rights on extrajudicial, summary or arbitrary executions stated her belief that the death penalty “should under no circumstances be mandatory”.

#### **B. Second safeguard**

No information was forthcoming to suggest that the laws of any of the responding countries or any other country allowed the death penalty to be applied retroactively if the law specifying capital punishment had not been in effect prior to the commission of the offence. As far as is known, all the countries that abolished the death penalty in the period 1999-2003 did not permit persons sentenced to death prior to abolition to be executed.

#### **C. Third safeguard**

##### **Persons below 18 years of age**

The execution of a person who committed a capital offence under the age of 18 is forbidden not only by the third safeguard, but also under the following international instruments: Article 37 (a) of the Convention on the Rights of the Child. (which all States have ratified, except for Somalia and the United States); Article 6, paragraph 5, of the International Covenant on Civil and Political Rights; article 4, paragraph 5, of the American Convention on Human Rights; and the African Charter on the Rights and Welfare of the Child. Both the Sub commissions on the Promotion and Protection of Human Rights, in its resolution 2000/17 of 17 August 2000, and the Inter-American Commission on Human Rights, in 2002, have voiced the opinion that this principle has become part of customary international law. At its fifty-ninth session, the General Assembly adopted resolution 59/261 of 23 December 2004 on children’s rights, in which all States were called upon to abolish the death penalty for children below 18 years of age at the time of the offence.

### **Pregnant women and new mothers**

El Salvador (as regards military offences in time of international war), Japan, Thailand and Trinidad and Tobago reported that a pregnant woman cannot be executed, but mothers of young children can be. Egypt reported that “Execution of the death penalty against pregnant women is stayed until two months after delivery of the child”; in the Philippines, it is at least one year after the delivery. Neither pregnant women nor young mothers can be executed in Morocco, but there was no such ban for either under the Mexican Criminal Code. No executions of pregnant women or of mothers of infant children were reported in the period 1999-2003.

The insane and persons suffering from mental retardation or extremely limited mental competence

All the responding retentionist countries stated that the law would not allow death sentences to be imposed on persons who were insane.

In Japan the “weak-minded” cannot be sentenced to death, but the legal test of being able to distinguish right from wrong and the mental competence to act on that knowledge is so limited that JFBA reported that mental retardation is not necessarily included in “weak-minded”. In fact, according to JFBA, the court finds even the most mentally retarded people are completely mentally competent.

This is only insofar as mental retardation falls within the concept of “abnormality of mind, defined as a condition of arrested or retarded development of mind or inherent causes or induced by disease or injury”. The condition would have to be such as to render the person unfit to plead or guilty but insane at the time the murder was committed. This review suggests that the safeguard to protect the insane and persons suffering from mental retardation or extremely limited mental competence from capital punishment will need to be reformulated to be in line with the recommendation of the Commission on Human Rights to include “any form of mental disorder”.

### **D. Fourth safeguard**

To comply with the fourth safeguard, a State must ensure that capital punishment may only be imposed where the guilt of the person charged is based on clear and convincing evidence leaving no room for an alternative explanation of the facts. At a Conference organized by JFBA in October 2004, it was asserted “it is obvious that there are wrongful convictions among capital cases”. According to a report submitted by the International Federation for Human Rights on a mission to Japan, it is the defendant’s responsibility to bring forth evidence in favour of their defence or to mitigate their responsibility, which is not always possible where defendants have limited means.

### **E. Fifth safeguard**

The fifth safeguard concerns procedures for a fair trial by a competent court, including adequate legal assistance at all stages of the proceedings. A person charged with a capital offence has the right to choose his or her own counsel at public expense, but it appears that this is only after the person has been prosecuted.

The principle of fair trial is established in the law of criminal procedure of Morocco, which “entitles the public prosecutor to supervise the conduct of investigations by the judicial police and control its operations, as well as to visit the places of custody of persons suspected of committing an offence”.

If the accused has no counsel to defend him during investigations, the Department of Public Prosecutions appoints such counsel in the decision for committal for trial. If the accused fails to engage counsel for the trial the court is obliged by law to appoint a lawyer to undertake his defence at the expense of the State.

### **F. Sixth safeguard**

All the retentionist countries that replied to the seventh survey (1999-2003) stated that they abided by the sixth safeguard (providing for appeals against a death sentence) and provided details of the procedures in place. In most countries there was an automatic review, while in Japan, Morocco and Trinidad and Tobago that was not the case. The response of JFBA stated that: There is no official procedure to review the sentence. A death row prisoner can request a retrial, but in the course of this procedure the Court examines only if there is new and obvious evidence, which proves the applicant’s innocence, or that the crime he/she committed deserves a lighter sentence. After the conviction of the death sentence, there is a possibility of execution even if the prisoner is requesting a retrial.

### **G. Seventh safeguard**

All the retentionist countries that responded to this section of the seventh questionnaire (Bahrain, Egypt, Japan, Morocco, the Philippines, Thailand and Trinidad and Tobago) stated that all persons sentenced to death had the right to seek a pardon or commutation of sentence, as did two countries that were abolitionist for ordinary crimes: El Salvador and Mexico. The countries provided explanations on the specific procedures to be followed; in most countries a request for pardon or commutation was automatically forwarded to the relevant person/body.

The official reply from Japan noted that a person sentenced to death had a right to seek commutation of the sentence or a pardon, but the JFBA stated that this was not the case: “Only the warden, chief probation officer

and public prosecutor have rights to make application for amnesty”, although prisoners are allowed to request wardens to make such applications. No specific time is allowed for such procedures because, as the JFBA pointed out a person cannot be informed of the date when he/she will be executed. It seems that the Government rejects the request just before the execution without any notice to the legal adviser.

It is thus apparent that in a number of retentionist countries the person who has been sentenced to death plays no part in the process nor is the pardoning process subject to the requirements of due process, or subject to review. In this regard, the decision of the Judicial Committee of the Privy Council in London in 2000 in the case of *Neville Lewis and others v. the Attorney General of Jamaica and Another (1999)* should be noted, which held that the exercise of the prerogative of mercy should, in the light of Jamaica’s international obligations, be exercised by procedures that are fair and proper, such as disclosure to the applicant of all materials to go before the review committee, and amenable to judicial review.

#### **H. Eighth safeguard**

No person would be executed pending any appeal or other recourse procedures, including pardon or commutation of sentence. The official reply from Japan stated that it was not possible to answer the question whether execution was invariably suspended: According to the report on the mission by the International Federation for Human Rights, inmates can be executed even if no decision has been reached on the question of a retrial or pardon.

The Human Rights Committee found in 2000 that three executions had taken place in the Philippines despite pending communications alleging violations of articles 6 and 14 and the Committee having acted under its rule 86 requesting the State to refrain from executing them. The Committee refused to accept the State’s explanation that it was inappropriate for counsel to submit a communication after rejection of their application for Presidential clemency (*Piandiong et al v. the Philippines, 2000*). In its reply to the seventh survey, the Philippines stated “ordinarily the Philippines acceded to requests made by international bodies to suspend execution of individuals whose cases are under consideration before them”.

There have been further reports of executions having taken place between 1999 and 2003 while petitions for clemency or review by an international body have been under way.

#### **I. Ninth safeguard**

The retentionist countries that responded to the questionnaire employed a variety of forms of execution. In Bahrain and Morocco it is carried out by a firing squad; in Egypt, Japan and Trinidad and Tobago by hanging; in the Philippines and Thailand by lethal injection (the latter changed from execution by firing squad in 2003). Both Bahrain and Pakistan stated that there were no special procedures employed to minimize the suffering of persons sentenced to death. Bahrain stated that the person had a choice of method of execution, but provided no details. It appears to be widely believed that lethal injection is likely to inflict the least suffering and this is at least one of the reasons why countries like the Philippines and Thailand have turned to it.

On the other hand, Japan’s reply expressed the view that “hanging as a way of execution is not particularly cruel in light of humanitarianism compared to other ways such as beheading, shooting, electrocution and lethal gas”. In contrast, a report from the Law Commission of India in 2003 argued that hanging is a particularly painful method of execution and suggested that lethal injection is “being accepted as the most civilized mode of execution of the death sentence”, the pain it induces being “only as the result of needle prick”. It recommended that lethal injection should be introduced in addition to hanging and that the choice of method should be left to the Court to decide.

In resolution 2004/67, the Commission on Human Rights urged States to ensure that where capital punishment occurs it shall not be carried out in public or in any other degrading manner and to ensure that any application of particularly cruel or inhuman means of execution, such as stoning is stopped immediately.

Japan said that “although there are no specific regulations to keep to a minimum the suffering of prisoners under sentence of death in the Standard Minimum Rules for the Treatment of Prisoners, religious services and advice/guidance by volunteers are offered upon their request in order to keep them emotionally stable”. In the case of *Xavier Evans v. Trinidad and Tobago (2000)*, the Human Rights Committee found that article 10 of the International Covenant was violated by the conditions of his confinement. JFBA reported that the Standard Minimum Rules for the Treatment of Prisoners are not observed in Japan.

A comparison between Bangladesh Constitution and European Union Charter

#### **Safeguards in the Constitution of Bangladesh:**

In the Preamble of our constitution it is stated that, “it shall be a fundamental aim of the state to realize through the democratic process a socialist society, free from exploitation- a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens”. It means that the state shall ensure all human rights in every circumstance.

Article 11 of the Constitution of the People's Republic of Bangladesh provides that, the Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed.

Article 27 of the constitution opens with the declaration that, "all citizens are equal before law and are entitled to equal protection of law".

Article 31 also provides that, it is the inalienable right of every citizen to enjoy the protection of the law and to be treated in accordance with the law.

Article 32 stated that, No person shall be deprived of life or personal liberty save in accordance with law.

Article 33 of the constitution of Bangladesh confers four constitutional safeguards upon a person arrested under ordinary law (Halim, 2003, p. 291). They are:

He cannot be detained in custody without being informed, as soon as may be, of the grounds of his arrest {A. 33(1) (5)}.

He shall have the right to consult and to be represented by a lawyer of his own choice {A. 33(1) (5)}.

He has the right to be produced before the nearest magistrate within 24 hours of his arrest {A. 33(2)} and

He cannot be detained in custody beyond the period of 24 hours without the authority of the magistrate {A. 33(2)}.

Moreover Article 35 also provides that, No person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence.

#### **Charter of Fundamental Rights of the European Union:**

In the Charter of the European Union there are some Articles deals with the safeguards regarding death penalty.

Article 2 of Charter of the European Union provides that, "Everyone has the right to life. No one shall be condemned to the death penalty, or executed.

Article 47 opens with the declaration that, "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."

Article 48 states that, "Everyone who has been charged shall be presumed innocent until proved guilty according to law. Respect for the rights of the defence of anyone who has been charged shall be guaranteed."

Article 49 also provides that, "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognized by the community of nations. The severity of penalties must not be disproportionate to the criminal offence.

Article 50 provides that, "No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law."

#### **Recommendations**

On the basis of present study the following suggestions can be considered appropriate and worthy to be pointed out.

Capital punishment is the violation of human rights and all human rights are guaranteed by the constitution of a state. So the state has to be very strict in ensuring the rights of the people.

In various countries, the judicial system is still corrupted. The judges are not well trained. That's why justice seekers are not getting real justice. So firstly the government should take proper and effective steps to remove all corruptions from our judicial system, and to ensure fair trial. Our judges need to be well trained so that they can find out the real criminals and can help the victims and his/her family.

By executing capital punishment, we can not surely say that our society is getting release from the hand of criminals day by day. Our aim should not be 'eye for an eye', rather if we allow the criminals any conditional release or acquittal like *Parole* or *probation* then the ex-prisoners will get chance to make themselves correct.

The death penalty is used disproportionately against poor, who cannot afford expensive legal counsel. That's why they are always deprived from real justice. So every poor person who can not afford enough money

for his suit, the government should allow him an experienced counselor with a cheap cost to represent him.

An execution arising out of miscarriage of justice is irreversible. So it is always better if the offender is granted life time imprisonment in lieu of death penalty. As a result that person will get chance to prove himself innocent.

In many countries capital punishment is imposed on child and adolescents, which violates Article 37(a) of the convention on the rights of the Child and Article 4(5) of the American convention. If they are allowed to do compulsorily any particular jobs for a particular period for their offence without giving capital punishment, may be they will be able to correct themselves and may be they will be back from crime world.

### **Conclusion**

The death penalty denies the possibility of rehabilitation and reconciliation. It is a symptom of a culture of violence, not a solution to it. It is also an affront to human dignity. The right to life and the right not to be subjected to cruel, inhuman, and degrading treatment or punishment are recognized in the Universal Declaration of Human Rights, other international human rights instruments, and many national constitutions. Capital punishment does not offer an opportunity to the offender to reform himself. Many innocent persons suffer irredeemable harm if they are wrongly hanged. As a matter of policy the act of taking another's life should never be justified by the state except in extreme cases of dire necessity and self preservation in war. Death penalty should be avoided if sufficient proof is there of unintentional or accidental Murders but for those who murder in cold blood by stalking people or like serial Murderers in Western Countries or the BDR incident should be hanged to prevent repetitions of similar crimes.

However, Time is not yet ripe when complete abolition of capital punishment can be strongly supported without endangering the social security. It is no exaggeration to say that in the present time the retention of capital punishment seems to be morally and legally justified. It serves as a reminder to everyone that in case of unpardonable crime one has to forfeit his own right to life and survival. Finally, I want to remember a famous saying of Mahatma Gandhi, "God alone can take life because He alone gives it.....An eye for an eye makes the whole world blind."

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