

Capital punishment

Capital punishment or the **death penalty** 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*. The term *capital* originates from the Latin *capitalism*, literally "regarding the head"

Currently 58 nations actively practice capital punishment, 98 countries have abolished it *de jure* for all crimes, 7 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 organization considers 140 countries to be abolitionist in law or practice. About 90% of all executions in the world take place in Asia.

History

Execution of criminals and political opponents has been used by nearly all societies—both to punish crime and to suppress political dissent. In most places that practice capital punishment it is reserved for murder, espionage, treason, or as part of military justice. In some countries sexual crimes, such as rape, adultery, incest and sodomy, carry the death penalty, as do religious crimes such as apostasy in Islamic nations (the formal renunciation of the state religion). In many countries that use the death penalty, drug trafficking is also a capital offence. In China, human trafficking and serious cases of corruption are punished by the death penalty. In militaries around the world courts-martial have imposed death sentences for offences such as cowardice, desertion, insubordination, and mutiny.

The use of formal execution extends to the beginning of recorded history. Most historical records and various primitive tribal practices indicate that the death penalty was a part of their justice system. Communal punishment for wrongdoing generally included compensation by the wrongdoer, corporal punishment, shunning, banishment and execution. Usually, compensation and shunning were enough as a form of justice. The response to crime committed by neighbouring tribes or communities included formal apology, compensation or blood feuds.

Trends in the Use of Capital Punishment

Several trends could be observed with regard to capital punishment during the past few decades. These may be described as under:

1. **The first trend** is towards the abolition of death penalty. In about 25 countries, it has been already abolished by law or tradition, while in many other countries movements to abolish it are very strong.
2. **Secondly**, the overall number of capital crimes is being steadily reduced.
3. **Thirdly**, tortuous methods are not used for giving effect to death penalty. Swift and painless methods are generally used in execution.

4. Fourthly, capital punishment is not given in public. The number and type of persons to be present at the time of execution has been restricted by law and administrative regulations.
5. Fifthly, some safeguard measures have been provided for miscarriage of justice.
6. Sixthly, certain types of persons are totally excluded from getting capital punishment, like children below a certain specified age, old persons above a certain age, pregnant women, and insane persons.
7. Lastly, the trend is towards reduction in the number of executions.

Effects of Death Penalty

There is a serious argument in respect to the effectiveness of the death penalty.

Retributive effect of death penalty: In the retributive justice system, death sentence has been used as an effective weapon for centuries. The justification in favor of it is that it is lawful to forfeit the life of a person who takes away another's life. A person who kills another must be eliminated from the society. Thus the motive for death penalty may indeed include vengeance which is a compensatory satisfaction for an injured party, group or society.

But commenting on the effectiveness of the death penalty, **Thorsten Sellin** observed that it has failed as a measure of social protection, so also as retributive justice.

Deterrent effect of death penalty: The fear of being condemned to death is perhaps the greatest deterrent which keeps an offender away from criminality. Death penalty in case of murder serves as an effective deterrent to remind the murderer about the severity of law towards his heinous crime and certainly helps in reducing the incidence of homicide.

However, the present trend is to keep the number of offences punishable by death to a minimum and avoid death penalty as far as possible although its retention in the statute book is favored even to this day.

Methods of capital punishment

Hanging

Hanging is the suspension of a person by a noose or ligature around the neck. The *Oxford English Dictionary* states that hanging in this sense is "specifically to put to death by suspension by the neck", though it formerly also referred to crucifixion and death by impalement in which the body would remain "hanging". Hanging has been a common method of capital punishment since medieval times, and is the official execution method in many countries and regions. In this specialized meaning of the common word *hang*, the past and past participle are usually taken to be *hanged* instead of *hung*.

Beheading

In some nations that adhere to Islamic Sharia law, beheadings are still a commonly used method of execution. The most frequently seen cases involve beheading by a curved, single-edged sword. While many nations allow beheading by law, Saudi Arabia is the country that uses it most often. The sentence is normally carried out on a Friday night in public outside the main mosque of the city after prayers. The penalty can be dealt for rape, murder, drug related crimes, and apostasy (rejection of religious beliefs).

Gas chamber

A **gas chamber** is an apparatus for killing humans or animals with gas, consisting of a sealed chamber into which a poisonous or asphyxiant gas is introduced. The most commonly used poisonous agent is hydrogen cyanide; carbon dioxide and carbon monoxide have also been used. Gas chambers were used as a method of execution for condemned prisoners in the United States beginning in the 1920s. During the Holocaust, large-scale gas chambers designed for mass killing were used by Nazi Germany as part of their genocide program, and also by the Independent State of Croatia at the Jasenovac concentration camp. The use of gas chambers has also been reported in North Korea.

Stoning

Stoning, or **lapidation**, is a form of capital punishment whereby a group throws stones at a person until death ensues. No individual among the group can be identified as the one who kills the subject, yet everyone involved plainly bears some degree of moral culpability. This is in contrast to the case of a judicial executioner. Slower than other forms of execution, stoning is a form of execution by torture.

Stoning remains a legal form of judicial punishment in Iran, Qatar, Mauritania, Saudi Arabia, Somalia, Sudan, Yemen, Northern Nigeria and in Terengganu of Malaysia, and Aceh of Indonesia. However, only Iran and Somalia actively practise it.

Electric chair

Execution by electrocution, usually performed using an **electric chair**, is an execution method originating in the United States in which the condemned person is strapped to a specially built wooden chair and electrocuted through electrodes placed on the body. This execution method was created by employees of Thomas Edison during the War of Currents, and has been used only in the United States and, for a period of several decades, in the Philippines (its first use there was in 1924 under American occupation, last in 1976).

Shooting

Execution by shooting is the most common method of execution in the world, used in over 70 countries. Whilst most of these countries use the firing squad, single person shooting is still found. In Soviet Russia, a single bullet to the back of the head was the most frequently used method of execution for military and non-military alike. This is still the main method of execution in Communist China though the gunshot can be to either the neck or head. In the past, the Chinese government would ask the family of the executed person to pay the price of the bullet. In Taiwan, the prisoner is first injected with a strong anesthetic to render him senseless and then a bullet is fired in to his heart

Laws Relating to Death Penalty in Bangladesh

Penal Code* 1860. The following eight types of offences is punishable with death:

Murder : Sec-302

Murder by life convict: Sec-303

Abatement of suicide of child or insane person: Sec-305

Attempt to murder by life convict causing hurt: Sec-307

Dacoit with murder: Sec-396

Giving or fabricating false evidence with to procure conviction of capital offence: Sec-194

Waging or attempting to wage war against Bangladesh: Sec-121

Abatement of mutiny: Sec-131

Other Laws in Bangladesh which Deal with Capital Punishment

Section 19A of the Arms Act, 1878, deals with capital punishment. Section 25 B of the Special Powers Act permits death penalty. Provisions of the Section, 7-9 of the Nari-O-Shishu Nirjatan Daman Ain, 2003 permits capital punishment for the criminals under this Act. Besides these some provisions of some other laws deal with capital punishment in Bangladesh. Acid Santras Ain is one of the most important Acts in this category.

Capital Punishment and Society

Death penalty not only takes one's life but its impact upon the hangman, the jailor and the general public is not very well. This usually produces contrary emotions in the general public and it affects the social health. The judges feel great difficulty in passing death sentence and quite a few of them suffer from murderer who has been hanged is proved innocent by some new evidence, one cannot imagine the amount of penitence suffered by the judges. There are instances in which hangman and jailers have committed suicides. The death sentence has an extremely adverse effect upon the children and wife of the criminal. The murder is committed by one but so many innocent persons suffer due to his crime. The death sentence by the state leaves a trail of bitterness in the family members of the criminal. The bitter and sour feelings in the family members do not allow them to make happy adjustment with the society; they tend to become criminals themselves.

Death Penalty and Humanitarianism

The supporters of capital punishment argue that the capital punishment is perfectly humanitarian. On the other hand, who are against the capital punishment do not support the capital punishment. According to them it is an in humanitarian act. Ordinarily, it is true that no one who has not the power to make life has the right to take it. But the supporters of the capital punishment considering in the total social perspective, find that it is not absolutely possible to follow this injunction. There are man6 dangerous animals which we have to kill for protecting our life. Similarly, by killing the murderer, a violent criminal we allow others to live in peace and security. But in fact, capital punishment is not humanitarian, an in humanitarian act. According to **Mahatma Gandhi**, "I don not regard death sentence contrary to Ahimsa.....only he takes life who gives it.

Arguments in Favor of Death Sentence

1. Capital punishment is only one way by which the offender of the society can be extinguished. It is not certain, how much effective result will be practically possible by giving imprisonment to a murderer or sending him to a correctional institution. So that many support death sentence for extinguishes the murderers from the society.
2. Capital punishment is an effective deterrent to crime. The threat of death penalty deters people from committing capital offences. They fear for committing such crimes. (There is no such deterrent punishment.
3. It protects society from dangerous and cruel criminals who can do serious harm to the people of the society.
4. Capital punishment works for social solidarity. Execution unifies society against crime. It also avoids private vengeance.
5. Many argue retribution is the main basis for capital punishment. Violent criminals deserve death for committing terrible crimes. Death penalty will satisfy the people and keep them away from taking law into their hands.
6. Capital punishment is a moral war. According to **Raffaele Garofalo** capital punishment is a weapon by which the society fights a moral war against the violent Capital punishment is a social need. According to **Victor Hugo** capital punishment is a social need and that it is imperative for the maintenance of social order and law and order in the society. In absence of capital punishment people will not fear to do murders.
7. Capital punishment is a selective process. According to **Haeekel** the capital punishment is a selective process. It is a method by which Nature eliminates those people who are dangerous for the society. According to **Plato**, if a man cannot be harmless otherwise than in sleep, it is better for him to die than live.

8 Capital punishment is economic saving. According to the supporters of the capital punishment, the capital punishment is most economical. Because, by giving capital punishment the state saves all the expenses it has to undertake in feeding and housing the criminals for 10 years or more.

9. Capital punishment is a legal demand. If a violent criminal or murderer is not sentenced to death, then the victims will lose their faith in law and justice. And they will try to take their revenge by their personal capacity,

10. It is argued that capital punishment is an easier method of punishment.

11. In comparison with life-term imprisonment, the capital punishment is definitive and certain. In jail, the convict can escape.

12. Capital punishment secures others from criminal. It is argued that it is essential to kill the criminals so that others may live in safety.

13. It gives peace of mind to the family members of the victims. They do not satisfy till the death of the criminal. They often keep the view that who kills their relative, must be killed.

14. In the penal system death sentence is essential. C. Darrow argues that it is not feasible to abolish capital punishment as long as the provision of punishment exists in a society.

Arguments against Capital Punishment

1. The retributive philosophy of eye for eye and tooth for tooth cannot be accepted in civilized and advanced society of today. The number of capital crimes is being reduced and the methods of execution are becoming more painless. The approach to offenders is more humanitarian than punitive.
2. The argument of deterring people by setting an example through fear of capital punishment is also not based on any hard evidence.
3. Capital punishment can result in grave injustice.
4. According to **Henting**, death penalty is a socially insufficient means for punishment to which must be added the judicial error, which one cannot exclude.
5. Capital punishment leaves no room for repentance. No man is above wrong, to err is human. A man who realizes his mistake and repents for it is a chastened man. Such persons usually not only become law-abiding citizens but also become social reformers. However, the capital punishment strikes to the very root of this possibility.
6. The capital punishment is not selective. It has been argued by the materialist philosopher **Haeckel** that the capital punishment is a nature's tool to eliminate the socially dangerous. **But**, this is not the case. Many innocents are hanged because they lack resources to defend themselves and, on the contrary, many hardened criminals escape even detection.
7. The capital punishment does not save money. The argument that by killing the criminal, the society saves so much money which would be spent on him in feeding him for 14 years or more. But what is simply overlooked in this argument is the fact that the criminals are not merely fed but are also made to put in rigorous labor.

8. The object of protecting society from dangerous offenders can be achieved by long imprisonment and also by improving conditions in prisons. Besides, it is now scientifically established that crime is not the result of personality deficiencies but is caused by unfavorable environment and interaction of many factors.
9. The argument that capital punishment unifies society against crime is not supported by evidence. Offenders today are not executed in the presence of the public and no efforts are made to give publicity to executions. Besides, social relationships become impersonal today and people pay little attention to the punishment of offenders.
10. Capital punishment is not a way to curb crimes. The argument that the fear of death will suppress the murderous instinct in the potential killers has been empirically found to be untenable. A comparative analysis of the statistics of murders in countries having death penalty with those which have no death penalty reveals that there is no difference between the two as regards murder.
11. May argue that the capital punishment is irreligious. Most of the religions of the world are based upon implicit faith in God. This faith entails that God alone is the creator and He alone has the power to destroy. Anyone who has not the power to make life also has no power to take the life.
12. Many argue that capital punishment is immoral. A true moral punishment is the self-realization of the crime by the criminal and the death sentence simply deprives a man the opportunity to receive the true punishment.
13. Owing to defects in the judicial system, sometimes innocent persons are given death penalty for crimes which they did not commit and the truth comes to be revealed after the persons are hanged.
14. Capital punishment lessens people's respect for human life. Law is expected to present the finest model of justice and reason to people but if laws spill human blood, then these very laws alter the idea of justice and injustice in the hearts of citizens. Capital punishment causes anger and revenge among the citizens.
15. Capital punishment has a negative effect on the system of criminal justice. On the one hand, the convicted offenders go in appeal to higher courts, and finally to the highest court to avoid the imposition of death penalty. Many judges are not able to decide the vague distinction between first and second degree murder. If capital punishment is abolished, the system of criminal justice is likely to improve.

Difficulty in Eliminating Death Sentence: The discussion of the capital punishment will not be complete with the consideration of practical problems and difficulties which come in the way of abolition of death sentence. We all want a society in which the death penalty will not be needed and no one will be hanged. But in the actual state of affairs as obtaining in our country there are murderers so brutal and cruel that to deny death to these criminals will be travesty of justice. According to **Herman Mannheim**, though the capital punishment may be ultimately abolished, this cannot be done till the suitable circumstances have been created. Before we think of removing the death penalty, the number of murders must come down drastically. In countries where death penalty has been abolished the number of murder is quite reduced. Therefore, before we can think of abolishing the capital punishment, the crime rate must come down.